IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 15,769

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United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 15,769

THE PROCTER & GAMBLE COMPANY,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL TRADE COMMISSION

To the Honorable, the Judges of the United States Court of Appeals for the Sixth Circuit:

Petitioner, The Procter & Gamble Company ("Procter"), pursuant to Section 11 (c) of the Clayton Act, as amended (15 U. S. C. § 21 (c), 73 Stat. 243), respectfully requests this Court to review and set aside an Order (and Opinion) of the Federal Trade Commission (the "Commission"), respondent herein, entered on November 26, 1963, and served upon Petitioner on December 16, 1963, in a proceeding entitled "In the Matter of The Procter & Gamble Company, Docket No. 6901."

In support of this Petition, Petitioner respectfully shows:

I.

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to, and venue is based upon, Section 11 (c) of the Clayton Act, 15 U. S. C. § 21 (c), wihch provides that:

"(c) Any person required by such order of the commission or board to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission or board be set aside."

2. Petitioner is a corporation duly organized and existing under the laws of the State of Ohio, with its principal place of business in the City of Cincinnati, Ohio, and carries on business within this Circuit, to wit, within the State of Ohio.

II.

NATURE AND HISTORY OF THE PROCEEDINGS

3. On September 30, 1957, the Federal Trade Commission issued its Complaint pursuant to Section 11 of the Clayton Act (U. S. C. Title 15, Section 21), charging that Procter had violated the provisions of Section 7 of the Clayton Act (U. S. C. Title 15, Section 18), as amended and approved December 29, 1950.

4. In substance, the Complaint challenged the legality of the acquisition by Procter (through the medium of a wholly owned subsidiary) on August 1, 1957, of the assets and business of the CLOROX CHEMICAL CO. ("Clorox Chemical") a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 850 - 42nd Avenue, Oakland, California. The business of Clorox Chemical was the manufacture and sale of household liquid bleach under the trade name "Clorox." Procter had never engaged in the business of

manufacturing or selling household liquid bleach. Nor had it ever been a supplier of any products used in the manufacture of household liquid bleach, or a customer for any products produced in the bleach industry.

5. In its Answer to the Complaint, filed on November 4, 1957, Procter denied all charges of illegality and denied that the said acquisition, or any of the acts or practices complained of, constituted a violation of Section 7 of the Clayton Act, as amended, *supra*.

6. The taking of evidence commenced on December 15, 1957, before a Hearing Examiner of the Commission. The original hearings were concluded on February 12, 1959. The Initial Decision of the Hearing Examiner was filed on June 17, 1960, and by Order of the same date the Examiner directed Procter to divest itself of all assets acquired through the acquisition of Clorox Chemical.

7. Procter appealed to the Commission. The appeal was heard on March 14, 1961. On June 15, 1961, the Commission entered an Order vacating and setting aside the Initial Decision of the Hearing Examiner. Said Order also remanded the proceeding to the Hearing Examiner for the reception of further evidence in conformity with the views expressed in the Opinion of the Commission and directed that the Hearing Examiner thereafter make and file a new Initial Decision. The Commission in thus vacating and setting aside the Initial Decision did not directly pass upon the correctness of most of the Examiner's findings. It held, however, that even on the basis of the findings as made, the record was insufficient to support the Examiner's conclusion that the acquisition would have the probable effect of lessening competition or tending to monopoly. After reviewing various aspects of the evidence, the Commission stated:

". . . we do not agree that [the evidence] supports [the Examiner's] conclusions with respect to the probable effects of the acquisition."

and that:

"The record as presently constituted does not provide an adequate basis for determining the legality of this acquisition. In the circumstances, we might dismiss the complaint. . . ."

8. Such Order of Remand was issued by the Commission *sua sponte*, without the request of any party to the proceeding, without any claim by any party that there were changed conditions of fact or law or that there was any newly discovered evidence, or, indeed, any additional evidence whatsoever essential to the disposition of the proceeding.

9. The Commission's Opinion indicated the scope and purpose of the Remand which it had ordered. It stated that it was remanding the proceeding so as to secure "a more complete and detailed post-acquisition picture, [which] has the advantage of allowing the Commission an informed hindsight upon which it can act rather than placing too strong a reliance upon treacherous conjecture." In line with this, the Commission limited the Remand, stating:

"The case will, therefore, be remanded to the hearing examiner for the reception of evidence relating to the competitive situation as it presently exists in the liquid bleach industry."

and added that:

"This evidence should relate to events occurring subsequent to November 1958, and should include market share data . . . as well as information directed to more clearly delineating the production and merchandising facilities and techniques [of Procter]

which have been utilized by Clorox under the control of respondent."

10. On November 24, 1961, Procter instituted an action in the United States District Court for the District of Columbia to enjoin any hearings on the Remand ordered by the Commission and in said action moved for a temporary restraining order. Said action was based upon the grounds, among others, that the Remand deprived Petitioner of its property without due process of law in violation of Amendment V of the Constitution; that following more than four years of investigation and trial it was the duty of the Commission to conclude the case instead of remanding it; that the Order of Remand was issued without any prior notice to respondent; that the Order of Remand violated the Clayton Act, the Administrative Procedure Act and the Commission's Rules of Practice in that it purported to reopen the proceedings after all proceedings were closed without any showing of compliance with the Act and the Rules of the Commission relating to the reopening of proceedings; that the Order was made arbitrarily without any request therefor by the Commission's counsel and with no showing to justify it; that the Order constituted a harrassment of the Petitioner; and that the Order was not consonant with the requirement of impartial conduct of the Commission in that in making it the Commission acted, not in its judicial capacity, but in its prosecuting capacity, thus giving to the Commission's counsel an additional opportunity to sustain its case, when the Commission itself had found that the evidence did not justify any relief against the respondent. The District Court, without passing upon the merits, denied the temporary restraining order, without prejudice, upon the assurance of counsel for the Commission that the evidence to be introduced upon

the Remand would be limited to evidence specifically designated by counsel and would not result in any protracted or extended proceedings. Thereafter the said action was, upon the consent of the parties, dismissed without prejudice.

11. Hearings on the Remand were held before the Hearing Examiner on December 1 and December 12, 1961. Prior to the commencement of such hearings, Procter moved before the Hearing Examiner for an order dismissing the proceeding on the grounds, among others, that the Commission's Order of Remand was unauthorized and was in excess of its authority for the reasons, among others, set forth in the Complaint filed by the Petitioner in the District Court of the United States for the District of Columbia and summarized in the preceding paragraph hereof. Said motion was denied by the Hearing Examiner and Petitioner duly excepted to such denial.

12. The evidence introduced on the Remand was limited and restricted, in accordance with the Commission's Order of Remand, and consisted mainly of post-acquisition evidence relating to events occurring subsequent to November, 1958 (the closing date of the evidence introduced in the original hearings before the Hearing Examiner). In the light of the Commission's determination that the evidence then in the record was insufficient to support any order against Procter, and the limitations contained in the Commission's Order of Remand, Petitioner introduced no further evidence bearing upon the erroneous findings of the Hearing Examiner based upon the record made in the original hearings.

13. On February 28, 1962, the Hearing Examiner filed his second Initial Decision and again entered an order directing Procter to divest itself of all assets acquired through the acquisition.

Grounds for Relief

14. Procter again appealed to the Commission. The appeal was heard on July 11, 1962. Thereafter the Commission, without determining the issues in the proceeding, and *sua sponte* and on its own motion entered an Order directing a reargument. Such reargument was had before the Commission on January 30, 1963. Supplemental memoranda were then filed, the last such being on March 19, 1963.

15. Thereafter the Commission handed down its Final Order (and Opinion), from which this appeal is taken, dated November 26, 1963, and served upon counsel December 16, 1963. In essence, the Commission's Order (and Opinion), to the extent that it is based upon any evidence at all, is based upon that which was adduced in the course of the original hearings and various inferences which are drawn therefrom. Respecting all issues material to its decision, the Commission has held that the evidence which it, itself, had ordered adduced on the Remand, was irrelevant and immaterial, and has ignored that evidence. It has thus based its decision upon a record completed five years prior thereto and held by the Commission, on the first appeal to it, to be inadequate to support any conclusion that there had been a violation of Section 7. In other words, the Final Order of the Commission is a direct contradiction of the first determination of the Commission, which had declared the same evidence to be insufficient to justify an order against Procter.

III.
GROUNDS FOR RELIEF

16. The Commission's Final Order (and Opinion) is contrary to law and should be annulled, vacated and set aside for the reasons (among other reasons which may be assigned in Petitioner's brief hereafter to be filed in support of this Petition) that:

Grounds for Relief

(a) The Commission's Order and the opinion, findings and conclusions upon which it is based are arbitrary, capricious, not in accordance with law, without statutory authority, unsupported by reliable, competent, probative or substantial evidence, unwarranted by the facts and founded upon erroneous inferences, incompatible with the record as a whole, and were entered in violation of the requirements of due process of law and are in disregard of the provisions of the Clayton Act and the Administrative Procedure Act.

(b) The Commission has failed to make specific findings of fact respecting the evidence in this record, or to specify which of the findings of the Hearing Examiner it accepts or rejects, and has wholly failed to make any findings of fact to support certain of its conclusions and has failed to state adequately, with the simplicity and clarity necessary to inform a reviewing court and the parties, the legal and factual bases for its Order (and Opinion), all as required by the Clayton Act, by the Administrative Procedure Act, and by the requirements of due process.

(c) The evidence taken by and before the Commission shows that none of the assets which the Commission ordered Petitioner to divest was acquired by Petitioner in violation of Section 7 of the Clayton Act, or any other provision of law.

(d) The Commission, in completely disregarding all of the substantial, probative, competent and reliable evidence which supported the lawfulness of the acquisition, denied Petitioner due process of law and violated the requirements of the Administrative Procedure Act.

(e) The Commission's Order (and Opinion) is erroneously based upon purported facts, assumptions, deductions,

arguments and conclusions which are without support in the record in this proceeding, and certain of which are contrary to the uncontradicted and undisputed evidence in such record, and others of which are contradicted by the Opinion itself.

(f) The Commission's Order (and Opinion) is erroneously based upon unwarranted, unsupportable and unfounded speculation, conjecture, surmise and inference, all having no basis or support in the record in this proceeding.

(g) The Commission erred in not reversing and setting aside various erroneous rulings of the Hearing Examiner which, among other things, and over Petitioner's objections, restricted Petitioner's right of cross-examination of various witnesses; excluded material evidence proffered by Petitioner; struck from the record material portions of the testimony of certain of Petitioner's witnesses; and denied Petitioner's motions to strike evidence improperly introduced by complainant. The Commission further erred in disregarding such excluded and stricken testimony proffered by Petitioner.

(h) The Commission's Order (and Opinion) departs from and improperly enlarges upon the issues framed in the Complaint and on the face thereof shows that it is departing from the issues as they were understood by all parties during the trial of this proceeding, in that, among other things, it purports to base its decision in part, at least, upon its determination, without any evidence in support thereof, of a lessening of competition in a "market" or "markets", improperly selected, and wholly different than that alleged in the Complaint and wholly different from that to which the evidence adduced in the hearings was directed or established, all in violation of the Clayton Act, the Administrative Procedure Act and due process of law.

Grounds for Relief

(i) The Commission acted unlawfully and arbitrarily in violation of the Administrative Procedure Act and the Commission's own Rules of Practice for Adjudicative Proceedings, in failing to proceed with reasonable dispatch to conclude its proceedings and in unreasonably prolonging such proceedings to the injury of Petitioner when, after a full trial and a finding by it that the evidence did not show a violation of law, it *sua sponte* reopened and remanded the proceeding for the taking of further evidence, and failed to dismiss the Complaint as its own findings required it to do. The Commission acted in violation of due process in issuing such Order on its own motion without request by any party, without notice of the contemplated action and without any showing of good cause for making the Remand. The error of the Commission, in thus arbitrarily and capriciously protracting the trial of this matter, was compounded by its determination in its final Opinion that the evidence which it, itself, directed to be introduced during the Remand hearings, was irrelevant and immaterial to the decision of the issues raised in the Complaint, and when its Final Order was predicated upon the evidence in the record at the time that the Commission had first reviewed such evidence and held it to be inadequate to support an order against Petitioner.

(j) The Commission considered, and its Order (and Opinion) is based upon matters *de hors* the record in this proceeding, and is based upon opinions, conclusions and extra-judicial material as to which the Petitioner had no notice and as to which no evidence was introduced in said proceeding and as to which Petitioner had no opportunity to reply or otherwise establish the invalidity and erroneous nature of such matters, all in violation of the provisions of the Clayton Act, the Administrative Procedure Act and due process of law.

Relief Prayed

(k) The Commission's Final Order is unwarranted, unjustified and was issued in contravention of the Clayton Act, the Administrative Procedure Act and due process of law.

(l) The Commission's Order (and Opinion) is based upon erroneous interpretations of the meaning, scope and effect of Section 7 of the Clayton Act and erroneous conclusions as to the application of such Act to the facts relating to the acquisition here in issue, and represents an unwarranted effort by the Commission to read into the Act concepts and social, economic and political philosophies at variance with the language of the Act and the intendment of the Congress in enacting it. As support for such erroneous interpretations and conclusions the Commission erroneously relied upon the untested, theoretical and unsubstantiated opinions, philosophies and economic views (certain of which were taken out of context and misinterpreted by the Commission) of writers and theorists who were not offered as witnesses in this proceeding, whose qualifications and experience (practical or otherwise) were never established by examination nor subjected to cross-examination, whose writings and concepts have not been shown to be generally accepted in their field, and whose views, predilections and ideologies are not consonant with the purposes and scope of Section 7, or with the intent of the Congress in enacting such statute, or with the proper functioning of competition in the American system of free enterprise.

IV.

RELIEF PRAYED

WHEREFORE, Petitioner respectfully prays that this Court:

Relief Prayed

(a) Review the aforesaid proceedings and the Final Order of the Commission entered therein and set aside said Order;

(b) Issue its order directing dismissal of the Commission's Complaint against Petitioner; and

(c) Award such other or further relief as may seem just and proper to this Court.

Respectfully submitted,

KENNETH C. ROYALL,
FREDERICK W. R. PRIDE,
ROBERT D. LARSEN,
200 Park Avenue,
New York, N. Y. 10017
Attorneys for Petitioner, The Procter & Gamble Company.

RICHARD W. BARRETT,

DINSMORE, SHOHL, BARRETT, COATES & DEUPREE,
12th Floor Union Central Building,
Cincinnati, Ohio 45202.

ROYALL, KOEGEL, HARRIS & CASKEY,
1730 K Street, N. W.,
Washington, D. C. 20006.
Of Counsel.

Dated: February 13, 1964.

RELEVANT DOCKET ENTRIES IN THE MATTER OF THE PROCTER & GAMBLE COMPANY, DOCKET NO. 6901 BEFORE THE FEDERAL TRADE COMMISSION.

10/7/57	Complaint served.
11/4/57	Answer filed.
3/10/58	Motion by counsel supporting complaint to set hearing dates and sites.
3/26/58	Commission order sustaining appeal from hearing examiner's ruling limiting subpoena.
3/26/59	Hearing examiner's order admitting Commission's Exhibit Number 710 A-B into evidence.
5/8/59	Proposed findings and conclusions by respondent.
5/8/59	Proposed findings, conclusions of law and order by counsel supporting the complaint.
6/17/60	Hearing examiner's order closing case.
6/17/60	Hearing examiner's initial decision and order of divestiture. (vacated 6-15-61)
7/15/60	Notice by respondent of appeal from hearing examiner's initial decision.
7/15/60	Notice by counsel supporting complaint of appeal from hearing examiner's initial decision.
3/14/61	Argument heard on cross-appeals by counsel from hearing examiner's initial decision.
6/15/61	Order vacating initial decision filed June 17, 1960, and remanding case to hearing examiner for further proceedings; and after receipt of additional evidence hearing examiner to file a new initial decision. (Opinion—Commission—attached)
11/7/61	Hearing examiner's order scheduling hearing.

Docket Entries

1/15/62	Proposed findings and conclusions after remand, submitted by respondent.
1/15/62	Additional and restated proposed findings and conclusions after remand by counsel supporting the complaint.
2/28/62	Hearing examiner's initial decision and order of divestiture.
3/22/62	Petition for review by respondent from hearing examiner's initial decision.
4/4/62	Order granting petition for review by respondent from hearing examiner's initial decision.
7/11/62	Argument heard on appeal by respondent from hearing examiner's initial decision.
11/30/62	Order scheduling reargument on appeal by respondent from hearing examiner's initial decision for January 30, 1963, at 2 p.m., Washington, D.C.
12/21/62	Motion by respondent for an order vacating the order for reargument; and motion to dismiss; with exhibit A.
1/2/63	Order denying motion by respondent to vacate order for reargument and to dismiss the complaint.
1/30/63	Argument heard on appeal by respondent from hearing examiner's initial decision.
11/26/63	Final Order (adopting, after modification hearing examiner's initial decision and order of divestiture) Opinion—Commission—attached Concurrence—Anderson (concurring in result)
12/19/63	Letter from the Secretary of the Commission correcting word in Opinion of the Commission.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of THE PROCTER & GAMBLE COMPANY, a corporation,	Docket No. 6901

COMPLAINT

(Filed October 7, 1957)

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (U.S.C., Title 15, Sec. 18) as amended and approved December 29, 1950, hereby issues its complaint, pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21) charging as follows:

PARAGRAPH ONE: Respondent, The Procter & Gamble Company (hereinafter referred to as "respondent") is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business at The Procter & Gamble Building, 301 East Sixth Street, Cincinnati, Ohio.

PARAGRAPH TWO: The Clorox Chemical Co. (hereinafter referred to as "Clorox") was, prior to August 1, 1957, a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 850 - 42nd Avenue, Oakland, California.

PARAGRAPH THREE: Respondent, directly and through various completely-owned subsidiary corporations, is engaged principally in the manufacture and sale of packaged soaps and detergents, paper products, shorten-

ing and other food products, and shampoos, dentrifices and home permanents, which are sold under advertised brand names. The respondent is the leading producer in the United States of soap and detergent products and a major producer in its other principal product fields. The most important consumer household brands which are sold by respondent to retail and wholesale grocery and drug outlets, department stores and variety stores are as follows:

Soaps, Detergents and Cleansers:

Ivory Soap
Ivory Flakes
Ivory Snow
Camay—toilet soap
Lava—pumice hand soap
Duz—detergent
Tide—detergent
Cheer—detergent
Dreft—detergent
Oxydol—detergent
Dash—low sudsing detergent
Joy—liquid detergent
Comet—household scouring cleanser
Cascade—automatic dishwasher detergent
Spic and Span—paint and linoleum cleaner
Zest—toilet detergent bar

Food Products:

Crisco—shortening
Golden Fluffo—shortening
Big Top—peanut butter
Duncan Hines—prepared mixes—16 kinds

Toilet Goods:

Crest—fluoridated toothpaste
Gleem—toothpaste

Drene—shampoo
Prell—shampoo
Shasta—shampoo
Lilt—home permanent
Pin-It—home permanent

Paper Products:

Charmin—toilet tissue
Lady Charmin—toilet tissue
Charmin—facial tissue
Charmin—napkins
Charmin—towels
Evergreen—industrial paper products

Respondent is also marketing "American Family" soap, flakes and detergents in the greater Chicago area. Selected market areas are being used by respondent to market "Biz" liquid detergent, "Whirl" liquid shortening, "Secret" personal deodorant, "Ivory" liquid detergent, "Jif" peanut butter and "Velvet Blend" shampoo.

Respondent also manufactures soaps, detergents, shortenings and edible oils for sale in bulk quantities to laundries, hotels, institutions, the baking industry and other industrial users; vegetable oils and chemicals chiefly for use in its own products; and by-products, such as glycerine, for sale to industrial users.

Respondent does a substantial manufacturing and marketing business abroad in consumer products similar to those manufactured and marketed in this country. Said business is conducted through completely-owned subsidiary corporations located in Canada, England, Cuba, the Philippines, Indonesia, Mexico, Venezuela, and Belgium.

PARAGRAPH FOUR: Respondent, directly and through its completely-owned subsidiaries, maintains factories for the manufacture of household and industrial

soaps and detergents, shortenings, toilet goods, edible vegetable oils and food products in the United States at the following locations:

Cincinnati and St. Bernard, Ohio	St. Louis, Missouri
Chicago, Illinois	Long Beach, California
Staten Island, New York	Sacramento, California
Kansas City, Kansas	Portsmouth, Virginia
Macon, Georgia	Quincy, Massachusetts
Dallas, Texas	Iowa City, Iowa
Dayton, Ohio	Jackson, Mississippi
Lexington, Kentucky	Omaha, Nebraska
Baltimore, Maryland	

In addition to the aforementioned locations, respondent and its completely-owned subsidiaries own vegetable oil mills located at Augusta and Macon, Georgia; Charlotte and Raleigh, North Carolina; Montgomery and Selma, Alabama; Corinth and Jackson, Mississippi; Memphis, Tennessee; Little Rock, Arkansas; New Madrid, Missouri; Louisville, Kentucky; Fort Worth, Texas; Baltimore, Maryland; Long Beach, California; and Toronto, Canada. Respondent and its completely-owned subsidiaries also operate chemical pulp plants at Memphis, Tennessee, and Foley, Florida; research facilities at Venice, Ohio; and paper production facilities at Green Bay and West DePere, Wisconsin, and a wood pulp plant at Green Bay.

PARAGRAPH FIVE: Respondent is engaged in the sale of products designated in Paragraphs Three and Four herein in commerce, as "commerce" is defined in the Clayton Act. During the fiscal year ending June 30, 1956, respondent's net sales of such products were $1,038,290,374. Estimated net sales for the fiscal year ending June 30, 1957, are $1,148,000,000.

PARAGRAPH SIX: According to the latest information available, respondent accounted for the following per-

centages of the total United States market in its designated major product fields by value of shipments:

Product Field	*Percentage of U. S. Market*
Toilet Soaps (bar soaps)	24%
Laundry Soaps (bar soaps)	91%
Package Soap Chips	52%
Package Soap Powders	51%
Liquid Detergents	45%
Packaged Detergents	58%
Shampoos	24%
Toothpastes	34%
Vegetable Shortenings	36%

PARAGRAPH SEVEN: Respondent has increased its size, operations, sales, profits, assets and earned surpluses tremendously in recent years. Since 1946 respondent's net worth, net sales and net profit have increased over 300%. Respondent now employs over 18,000 persons in the United States and over 8,000 persons abroad. Respondent is constantly diversifying its operations and manufacturing and selling new products. Respondent has also entered into the production and sale of additional products by acquiring assets and stock of existing producers of said products. Among such acquisitions in recent years have been the following:

Year	*Company*	*Product or Activity*
1955	W. T. Young Foods, Inc.	"Big Top" Peanut Butter and peanut products.
1956	Prepared Mix Division of Nebraska Consolidated Mills, Inc.	Cake mixes.
1956	Hines-Park Foods, Inc.	Distributor of food products, principally cake mixes.

1956	Duncan Hines Institute, Inc.	Licenses for prestige eating establishments.
1957	Charmin Paper Mills, Inc.	Paper tissues and related paper products.
1957	Clorox Chemical Co.	Liquid Bleach.

Respondent has also acquired numerous soap and detergent companies since 1905. Respondent was originally founded in 1837 and has constantly expanded by acquisition, by integration, and by diversification to reach its present standing.

PARAGRAPH EIGHT: Prior to August 1, 1957, Clorox was engaged in the production and sale of sodium hypochlorite liquid bleach and disinfectant. Said product was sold nationally under the trade name "Clorox," in commerce, as "commerce" is defined in the Clayton Act. In the fiscal year ending June 30, 1956, net sales of "Clorox" were $36,409,197.70. Net sales of "Clorox" for the fiscal year ending June 30, 1957, were approximately $40,000,000. Clorox is, and has been for many years, the largest producer of household liquid bleach in the United States. In 1956 Clorox produced and sold approximately 48% of all household liquid bleaches sold in the United States. The number two producer in this field accounted for approximately 16% of all household liquid bleaches sold. The remaining producers, approximately forty in number, accounted for the remaining 36% of sales of household liquid bleach in the United States in 1956. Within the latter group of producers, no single liquid bleach producer enjoyed over 5% of the national household liquid bleach market.

PARAGRAPH NINE: On or after August 1, 1957, respondent acquired Clorox as a going concern, including

all of Clorox's assets, trade-marks, business and good will. The acquisition was achieved by respondent exchanging 8½ shares of its stock for every 10 shares of Clorox stock outstanding. The market value of respondent's exchanged stock was approximately $30,300,000. The assets of Clorox were valued at approximately $15,000,000 at the time of the acquisition.

Under the terms of the acquisition agreements, respondent was given the exclusive right to the name "Clorox." Respondent formed a new Ohio corporation, The Clorox Company, as a completely-owned subsidiary, to commence the manufacture and sale of "Clorox" liquid bleach and transferred the assets and intangibles obtained from Clorox to said subsidiary corporation. The Clorox Chemical Co. was dissolved after its officers distributed respondent's exchanged stock to the stockholders of Clorox Chemical Co. under the ratio of exchange.

PARAGRAPH TEN: Prior to the aforementioned acquisition, Clorox was the dominant factor in the household liquid bleach market. Said position had been achieved through extensive advertising which had made the product "Clorox" well known and accepted in American households. Production of "Clorox" took place at factories in Atlanta, Georgia; Boston, Massachusetts; Camden, New Jersey; Charlotte, North Carolina; Chicago, Illinois; Cleveland, Ohio; Houston, Texas; Jersey City, New Jersey; Kansas City, Missouri; Los Angeles, California; Oakland, California; Seattle, Washington; and Tampa, Florida, prior to the acquisition. These regional production plants enabled Clorox to reduce freight costs of its finished product. Said freight costs are a significant factor in the sale of household liquid bleach.

Clorox had experienced a pattern of constant growth and expansion in the five years prior to the aforemen-

tioned acquisition and its share of the household liquid bleach market had been constantly increasing. Clorox produced no product in addition to "Clorox" bleach. At the time of the aforementioned acquisition Clorox was dominant in its product market, was operating profitably and its product "Clorox" was firmly established by public acceptance. Said public acceptance and the value of the well known and widely advertised name "Clorox" is demonstrated by the fact that respondent paid Clorox far in excess of the value of Clorox's assets in the acquisition aforementioned, said excess amount representing the value of the trade-name "Clorox" and the good will of Clorox.

PARAGRAPH ELEVEN: Respondent, by virtue of the acquisition of Clorox, has entered a market in which it did not formerly compete or offer a competitive product. Respondent, in so doing, has replaced the dominant factor in that market with its own dominant ability to produce and sell which threatens the household liquid bleach market with extremely adverse competitive effects. Prior to the aforementioned acquisition, Clorox—with assets of approximately $15,000,000; accumulated retained earnings of approximately $6,000,000; annual net income of approximately $2,000,000; and annual net sales of approximately $40,000,000—was gaining a steadily larger share of the household liquid bleach market as the market share of the other household liquid bleach producers constantly diminished. As a result of the acquisition, said household liquid bleach producers must now compete with respondent—with assets of approximately $726,000,000; accumulated retained earnings of approximately $409,000,000; annual net income of approximately $60,000,000; and annual net sales of approximately 1.2 billion dollars.

PARAGRAPH TWELVE: In addition to its economic strength and ability, as delineated heretofore, respondent

is a recognized leader in the merchandising of household or grocery store products. The vast majority of respondent's products, and "Clorox," are sold in grocery stores at low prices and in large volume. Such products require consumer acceptance in order to obtain critically short and valuable shelf space in the grocery stores. Such consumer acceptance of these products, especially soaps, detergents, cleansers, bleaches and toilet goods is obtained by extensive advertising. Respondent is the second largest advertiser of all products in the United States, having spent approximately $79,000,00 for advertising of its products in 1956, utilizing all media and means of reaching the consuming public.

In conjunction with its advertising, respondent has been extremely successful in promoting its household products. Respondent has utilized various promotional devices—including "two-for-one" sales, free samples, price-reducing coupons, reduced prices, and premiums for purchase—to a high degree.

PARAGRAPH THIRTEEN: The ability of respondent to utilize advertising and promotional devices to gain shelf space and to sell its products, as set forth in Paragraph Twelve, has been vividly demonstrated in the recent past. Respondent introduced a new toothpaste, "Gleem," in 1953, and another new toothpaste, "Crest," in 1956. By utilizing its advertising and promotional ability, as aforesaid, "Gleem" had acquired 25% of the toothpaste market by 1955 and "Crest" acquired an additional 13% of said market in its first year of production.

In a field more directly related to liquid bleaches, the household cleanser market, respondent introduced in 1956 a new product, "Comet." By utilizing its advertising and promotional ability, as aforesaid, "Comet" acquired approximately 29% of the household cleanser market by

March, 1957, nine months after it was first introduced. In said promotions respondent distributed approximately 30,000,000 miniature samples of "Comet" at an estimated cost of 3.3 million dollars.

These examples of the effectiveness of respondent's merchandising and advertising ability and power with new and previously unknown products demonstrate the impact on the household liquid bleach market that respondent, as a result of the acquisition of Clorox, can now accomplish with the already existing, dominant, well-known and established product "Clorox." Said impact will be to the competitive disadvantage of household liquid bleach manufacturers and the household liquid bleach industry.

PARAGRAPH FOURTEEN: Respondent, by virtue of the acquisition, has expanded its line of soaps, detergents and cleansers with a closely allied product, household liquid bleach. While respondent had not, prior to the acquisition of Clorox, produced a product competitive with household liquid bleach, respondent's soaps, detergents, and cleansers are used by housewives in conjunction with, and as a complement to, household liquid bleach. Therefore, respondent can now offer grocery stores a complete line of cleansing and laundry products. Said complete line increases respondent's ability to obtain the aforementioned valuable and difficult to obtain grocery store shelf-space and is to the competitive disadvantage of household liquid bleach companies, none of whom possess the complete line of cleansing and laundry products as respondent now does.

PARAGRAPH FIFTEEN: Respondent has violated Section 7 of the Clayton Act, as amended, in that the acquisition of the assets and business of Clorox, as described in Paragraph Nine hereof, may have the effect

of substantially lessening competition or tending to create a monopoly in the production and sale of household liquid bleaches in the United States and in each of them.

More specifically, the aforesaid effects include the actual or potential lessening of competition and a tendency to create a monopoly in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

1. Actual and potential competition generally in the production and sale of household liquid bleaches may be substantially lessened.
2. The Clorox Chemical Co. has been permanently eliminated as an independent competitive factor in the household liquid bleach industry.
3. Household liquid bleach producers may be unable to compete with respondent due to any one, any combination of, or all of the following factors:
   (a) Respondent's market position;
   (b) Respondent's financial and economic strength;
   (c) Respondent's advertising ability and experience;
   (d) Respondent's merchandising and promotional ability and experience;
   (e) Respondent's "full-line" of cleansing and laundry products;
   (f) Respondent's ability to command consumer acceptance of its products and of valuable grocery store shelf space;
   (g) Respondent's ability to concentrate on one of its products, or on one selected section of the country, the full impact of its advertising, promotional, and merchandising experience and ability.
4. Respondent's competitive position in the production and sale of household liquid bleaches may be en-

hanced to the detriment of actual and potential competition.

5. Industry-wide concentration of the production and sale of household liquid bleaches may be increased.
6. The acquisition gives respondent the facilities, the market position and the dominant ability to monopolize or to tend to monopolize the household liquid bleach market.

PARAGRAPH SIXTEEN: The foregoing acquisition, acts and practices of respondent, as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this 30th day of September A.D., 1957, issues its complaint against said respondent.

NOTICE

Notice is hereby given to the respondent hereinbefore named that the 16th day of December A.D., 1957, at 10 o'clock is hereby fixed as the time and Cincinnati, Ohio as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint and to divest respondent of the acquired assets and properties described in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. Such answer shall contain a concise statement of the

facts constituting the ground of defense and a specific admission, denial or explanation of each fact alleged in the complaint or, if respondent is without knowledge thereof, a statement to that effect.

If respondent elects not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that respondent admits all material allegations to be true. Such an answer shall constitute a waiver of hearing as to facts so alleged, and an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding shall be issued by the hearing examiner. In such answer respondent may, however, reserve the right to submit proposed findings and conclusions and the right to appeal under Section 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings.

If any respondent elects to negotiate a consent order, it shall be done in accordance with Section 3.25 of the Commission's Rules of Practice.

Failure to file answer within the time above provided, and failure to appear at the time and place fixed for hearing, shall be deemed to authorize a hearing examiner, without further notice to respondent, to find the facts to be as alleged in the complaint, to conduct a hearing to determine the form of order, and, thereafter, to enter an initial decision containing such findings and order.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed at Washington, D. C., this 30th day of September, 1957.

By the Commission.

/s/ ROBERT M. PARRISH,
ROBERT M. PARRISH,
Secretary.

[SEAL]

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of THE PROCTER & GAMBLE COMPANY, a corporation,	Docket No. 6901

ANSWER

(Filed November 4, 1957)

Respondent, answering the complaint herein, alleges:

PARAGRAPH ONE: The allegations of Paragraph One are admitted.

PARAGRAPH TWO: The allegations of Paragraph Two are admitted.

PARAGRAPH THREE: In connection with the first subparagraph, respondent and its subsidiaries are engaged principally in the manufacture and sale of packaged soaps and detergents, paper products, shortening and other food products, and shampoos, dentifrices and home permanents, which are sold under advertised brand names. Respondent is one of the leading producers in the United States of soap and detergent products and it is one of the major producers in its other principal product fields. The most important consumer household brands of respondent are sold by it to retail and wholesale grocery and drug outlets, department stores and variety stores. It is alleged that the various brands of respondent vary greatly not only in their nature and content but also in their respective proportion of the total sales of respondent. In place of the list of the most important brands sold by respondent, shown on page two, the following should be substituted:

Answer

Soaps, Detergents and Cleaners:

Ivory Soap—all-purpose bar soap
Ivory Flakes—mild all-purpose flake soap
Ivory Snow—mild all-purpose granulated soap
Camay—hard-milled perfumed toilet soap
Lava—pumice hand soap
Duz—detergent and granulated soap
Tide—heavy-duty detergent
Cheer—heavy-duty detergent
Dreft—light-duty detergent
Oxydol—heavy-duty detergent
Dash—low sudsing heavy-duty detergent
Joy—liquid general purpose detergent
Comet—scouring cleanser
Cascade—detergent for automatic dishwashers
Spic and Span—paint and linoleum cleaner
Zest—detergent toilet bar

Food Products:

Crisco—vegetable shortening
Golden Fluffo—vegetable and lard shortening
Big Top—peanut butter and peanuts
Duncan Hines—prepared baking mixes—15 kinds

Toilet Goods:

Crest—fluoridated toothpaste
Gleem—toothpaste
Drene—liquid shampoo
Prell—paste and liquid shampoo
Shasta—cream shampoo
Lilt—home permanent
Pin-It—home permanent

Paper Products:

Charmin—household toilet tissue
Lady Charmin—household toilet tissue

Charmin—facial tissue
Charmin—paper napkins
Charmin—paper towels
Evergreen—industrial paper towels and tissue

The first sentence of the second subparagraph is admitted. The second sentence is admitted to the following extent: "Biz" liquid detergent, "Whirl" liquid shortening, "Secret" personal deodorant, "Ivory" liquid detergent, "Jif" peanut butter and "Velvet Blend" shampoo are being marketed only in limited areas.

The third subparagraph is admitted.

In connection with the fourth subparagraph, respondent admits that subsidiaries in the countries set forth in such subparagraph manufacture or market abroad products similar to some of the products manufactured and marketed by it and its subsidiaries in this country. However, it is alleged that the fourth subparagraph is irrelevant and immaterial and should be stricken.

Except as herein admitted, each and every allegation of Paragraph Three is denied.

PARAGRAPH FOUR: The first subparagraph is admitted except the first six lines should read as follows: "The factories of respondent and its subsidiaries for the manufacture of household and industrial soaps and detergents, shortenings, toilet goods, edible oils and food products in the United States are at the following locations:".

The second subparagraph is admitted except the first three lines should read as follows: "Respondent and its subsidiaries own vegetable oil mills located at Augusta and Macon," and except that the words "Baltimore, Maryland;" should be eliminated.

Except as herein admitted, Paragraph Four is denied.

Answer

PARAGRAPH FIVE: Respondent alleges that not all of its products were sold in "commerce", as "commerce" is defined in the Clayton Act, and also alleges that the net sales of respondent and its subsidiaries for the fiscal year ending June 30, 1956, were $1,038,290,374 and for the fiscal year ending June 30, 1957, were $1,156,389,726. Otherwise, respondent admits the allegations in Paragraph Five.

Except as herein admitted, Paragraph Five is denied.

PARAGRAPH SIX: The allegations of Paragraph Six are denied.

PARAGRAPH SEVEN: The first sentence of the first subparagraph is admitted except that the word "tremendously" is ambiguous and this sentence is, therefore, denied.

The third sentence of the first subparagraph is admitted, with the addition of the words "and its subsidiaries" after the word "Respondent".

As to the fourth sentence, it is admitted that respondent has diversified its operations in some instances.

As to the fifth and sixth sentences of the first subparagraph, respondent admits that it acquired in the year specified the various companies listed on page five of the Complaint, but alleges that Hines-Park Foods, Inc. was concerned with licensing the Duncan Hines trademark for use on various food products and that Duncan Hines Institute, Inc. was concerned with licensing the Duncan Hines trademark for use on household appliances and publishing directories of dining and lodging establishments. Respondent also alleges that the acquisitions of Hines-Park Foods, Inc. and Duncan Hines Institute, Inc. were necessary in order to acquire the Duncan Hines trademark.

The first sentence of the second subparagraph is admitted except that respondent has never acquired a deter-

gent company and the word "numerous" is ambiguous and this sentence is, therefore, denied.

In connection with the second sentence in the second subparagraph, it is admitted that respondent was founded in 1837, but as a partnership, and that it has expanded from time to time since that date. Such expansion resulted in part from acquisition and from diversification but principally by natural internal growth of respondent, from improvement of its products and from the satisfaction with and acceptance by consumers of such products.

Except as herein admitted, each and every allegation of Paragraph Seven is denied.

PARAGRAPH EIGHT: The first four sentences of Paragraph Eight are admitted.

In connection with this and all subsequent paragraphs, respondent does not admit the legal or practical validity of complainant's "household liquid bleach market."

Except as herein admitted, each and every allegation of Paragraph Eight is denied.

PARAGRAPH NINE: With respect to Paragraph Nine, respondent alleges that on August 1, 1957, pursuant to a Plan of Reorganization, The Clorox Company acquired substantially all of the then existing assets and business as a going concern of Clorox Chemical Co., including without limitation, all of its good will and rights to the use of its name or any variant thereof, and gave solely in exchange therefor 639,578 shares of respondent's fully paid and non-assessable $2.00 par value common shares. Respondent admits that it incorporated The Clorox Company under the laws of the State of Ohio, that The Clorox Company is a wholly owned subsidiary of respondent and that Clorox Chemical Co. has been dissolved.

Except as herein admitted, each and every allegation of Paragraph Nine is denied.

Answer

PARAGRAPH TEN: In connection with the second sentence of the first subparagraph, it is admitted that the product "Clorox" was well known and accepted in the American households, and that it was advertised. The other allegations in this sentence are conclusory and are denied for lack of information and belief and should be stricken.

The third sentence in the first subparagraph is admitted.

The fourth and fifth sentences in the first subparagraph are conclusory, relative and ambiguous and are denied by respondent for lack of information and belief and should be stricken.

In connection with the first sentence of the second subparagraph, it is admitted that the business of Clorox Chemical Co. has grown in the past five years.

As to the third sentence in the second subparagraph, it is admitted that Clorox Chemical Co. was operating profitably and that its product "Clorox" had public acceptance. The remainder of this sentence is conclusory and ambiguous and is denied and should be stricken.

In connection with the fourth sentence of the second subparagraph, it is admitted that the product "Clorox" had public acceptance and that the trade name "Clorox" had value. It is further alleged that the real value of the assets of Clorox Chemical Co. necessarily and properly included, among other things, the value of its trade name and good will. It is denied that as a result of the acquisition, the Clorox Chemical Co. received in excess of the true value of its assets.

Except as herein stated, each and every allegation of Paragraph Ten is denied.

PARAGRAPH ELEVEN: In connection with the first sentence of Paragraph Eleven, respondent admits that by virtue of the acquisition, respondent has entered a market

in which it did not formerly compete or offer a competitive product.

Respondent admits that the figures in the third sentence are approximately those shown by the books of Clorox Chemical Co. except that the book value of the assets (exclusive of good will, etc.) was $11,731,000 and the accumulated retained earnings were about $7,013,000. In connection with the rest of this sentence, it is alleged that Clorox Chemical Co. had made gains in sales on a dollar basis but respondent denies for lack of information the allegations as to Clorox' relative share of the market and the relative share of other bleach producers.

The figures stated in the fourth sentence would be approximately correct if stated as follows: As of June 30, 1957, the assets of respondent and its subsidiaries were $688,272,623; the accumulated retained earnings were $389,303,033; the consolidated net earnings were $67,807,376; and the annual net sales were $1,156,389,726. Respondent denies any inference in the fourth sentence that any competitive burden is or may be placed on other bleach producers.

Except as herein admitted, each and every allegation of Paragraph Eleven is denied.

PARAGRAPH TWELVE: As to the first sentence of the first subparagraph, it is admitted that respondent merchandises the products enumerated in Paragraph Three of its Answer.

As to the second sentence of the first subparagraph, it is admitted that respondent and its subsidiaries sell at low prices and sometimes in large volume as do competitors.

In connection with the third sentence of the first subparagraph, respondent alleges that there is consumer acceptance of and satisfaction with the products of respond-

ent and its subsidiaries and that by reason of such consumer acceptance and satisfaction retailers devote an appropriate amount of shelf space to those products and to products of other manufacturers.

In connection with the fourth sentence of the first subparagraph, respondent admits that it advertises its products well. Such advertising contributes to consumer acceptance only if and when such products, in themselves and in relation to competitive products, are satisfactory to the consumer.

The advertising expenditure in the fifth sentence of the first subparagraph is not denied. It is further alleged that respondent uses various media for presenting its products to the consuming public.

In connection with the second subparagraph, respondent admits that it has been successful in the promotion and sale of many of its products and that it has used from time to time for specific products promotional methods including those mentioned in this subparagraph or methods somewhat like them.

Except as herein admitted, each and every allegation of Paragraph Twelve is denied.

PARAGRAPH THIRTEEN: In connection with the first subparagraph, respondent admits that "Gleem" was introduced in 1953 and "Crest" in 1956 and that both were advertised and promoted. Respondent denies for lack of information and belief the alleged percentage of the market of these products.

In connection with the second subparagraph, it is admitted that respondent introduced "Comet" in 1956, that it advertised and promoted "Comet" and that respondent distributed 30,000,000 or more miniature samples at a cost of 3.3 million dollars or more. Respondent denies for lack of knowledge and information "Comet's" alleged percentage of the market.

In connection with the third subparagraph, respondent alleges that it has on occasion advertised, promoted and sold products which, despite all of its efforts, failed to obtain consumer acceptance and that in several recent instances the products were withdrawn from the market.

The allegations of Paragraph Thirteen are not only conclusory, ambiguous and argumentative but also irrelevant and immaterial to this proceeding and have no proper purpose and should be stricken.

Except as herein admitted, each and every allegation of Paragraph Thirteen is denied.

PARAGRAPH FOURTEEN: In connection with the first sentence, the words "closely allied product" are ambiguous and the sentence is, therefore, denied.

In connection with the second sentence, it is admitted that respondent has not produced a product competitive with household liquid bleach.

In connection with the third sentence, respondent denies that it has a complete line of cleansing and laundry products.

Except as herein admitted, each and every allegation of Paragraph Fourteen is denied.

PARAGRAPH FIFTEEN: Each and every allegation of Paragraph Fifteen is denied and in this connection, respondent alleges that there are and may be factors, totally unrelated to the acquisition of Clorox, which will affect household liquid bleaches. In the case of practically all consumer products, technological advances and changes in consumer preferences affect their future course. This future course and the causes therefor can never be predicted with any accuracy, but such technological advances and changes in consumer preferences are certain to have a much greater effect than changes of ownership of the company involved. This applies specifically to the produet

"Clorox." Neither complainant nor respondent nor anyone else can predict or control the factors which may in the future affect the sales of household bleaches. Three all-important factors, namely, product quality, consumer preferences, and technological advances, are completely ignored in the Complaint.

PARAGRAPH SIXTEEN: The allegations of Paragraph Sixteen are denied.

WHEREFORE, respondent asserts that this proceeding should not be entertained by the Federal Trade Commission; that there is no cause of action against respondent, and no basis in law or fact for any cease and desist or divestiture order or for any other relief against respondent; and respondent therefore prays that this proceeding be dismissed.

THE PROCTER & GAMBLE COMPANY

By /s/ JOSEPH C. DINSMORE
JOSEPH C. DINSMORE

/s/ RICHARD W. TODD
RICHARD W. TODD

/s/ KENNETH C. ROYALL
KENNETH C. ROYALL

/s/ ROBERT D. LARSEN
ROBERT D. LARSEN

Attorneys for Respondent

Of Counsel:

DINSMORE, SHOHL, DINSMORE & TODD
Union Central Building
Cincinnati 2, Ohio

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY
1000 Vermont Avenue, N.W.
Washington 5, D.C.

November 4, 1957.

Motion for the Establishment of Hearing Sites and Dates

[Caption Omitted]

To: Hearing Examiner Everett F. Haycraft

MOTION FOR THE ESTABLISHMENT OF HEARING SITES AND DATES

(Filed March 10, 1958)

COME NOW counsel supporting the complaint and move the examiner that hearings in the above-entitled matter in support of the complaint be scheduled at the following cities:

City	*Days Requested*
Philadelphia, Pa.	3
Buffalo, N.Y.	3
New York City	5
Chicago, Ill.	2
St. Paul, Minnesota	2
Boston, Mass.	5
San Francisco, Cal.	4
Los Angeles, Cal.	5
Greenville, S.C.	2
Detroit, Mich.	2

It will be noted by the examiner that several cities which we have previously indicated as possible hearing sites are not included in the above list and several new cities have been added. This change is due to the fact that we have not had a sufficient opportunity for a careful analysis of our files in this matter until the last few days. The recommended number of hearing days reflects our attempt to estimate very liberally the always unknown factor of the length of the cross-examination. The cities above represent the maximum number of hearings we can foresee at this point and it is very likely that as the hearings progress, we will find it unnecessary to go to several of these cities. That will be our objective throughout the hearings.

Motion for the Establishment of Hearing Sites and Dates

The hearings for San Francisco are already scheduled to commence April 15 for four days and the Los Angeles hearings are already scheduled to commence April 21 for five days. At this time we believe that, in the absence of an excessively long cross-examination, these dates should be sufficient. However, we would suggest that a hearing room be tentatively reserved in Los Angeles for April 29 and 30 in the event our estimate proves to be insufficient. Hearings on these days will depend, of course, on the return to the West Coast from Washington, D. C. of respondent's counsel from his argument before the Supreme Court on April 28.

Counsel in support of the complaint share the desire of the examiner to conclude the case-in-chief in support of the complaint prior to July 1, 1958. Apparently, respondent also desires to expedite this entire proceeding in every way possible. Therefore, counsel supporting the complaint have reserved the entire time period between April 15 and July 1 for hearings in this matter with two exceptions, which were previously scheduled. Those exceptions are an oral argument before the Commission on May 1, 1958, and defense hearings in Docket 6670 the entire week of June 9, 1958.

We would appreciate that the dates for the requested hearings be established at an early date in order that we might notify our prospective witnesses, many of whom will desire to arrange their appearance so as not to conflict with business and vacation plans, especially during the month of June. It is suggested that the hearings for Chicago and St. Paul be scheduled for the same week and the hearings for Detroit and Philadelphia be scheduled for the same week. It is further suggested that the Buffalo and Boston hearings be scheduled for one trip, or if a

longer trip is agreeable, that the New York City, Boston and Buffalo hearings be scheduled for one trip.

All of the requested hearing dates herein are subject, of course, to the convenience of all parties and counsel supporting the complaint stand ready to cooperate in that respect.

Therefore, it is respectfully moved that the above-requested hearing sites and dates be established for the completion of the Commission's case-in-chief. The only addition to this proposed schedule which occurs to us is that a return trip to Cincinnati may be necessary if the interlocutory appeal now pending before the Commission is ruled on favorably to counsel supporting the complaint.

Respectfully submitted,

/s/ WILLIAM R. TINCHER
WILLIAM R. TINCHER,

/s/ THOMAS A. DEVENY, III
THOMAS A. DEVENY, III,
Counsel Supporting the Complaint.

March 10, 1958.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:
JOHN W. GWYNNE, *Chairman*
ROBERT T. SECREST
SIGURD ANDERSON
WILLIAM C. KERN
EDWARD T. TAIT

In the Matter of THE PROCTER & GAMBLE COMPANY, a corporation.	Docket No. 6901

ORDER SUSTAINING APPEAL FROM HEARING EXAMINER'S RULING LIMITING SUBPOENA

(Issued March 26, 1958)

This matter having come on to be heard upon an interlocutory appeal filed by counsel in support of the complaint from the hearing examiner's rulings granting in part the respondent's motion to limit or quash a subpoena duces tecum theretofore served on the respondent; and

It appearing that the effects of the rulings are to exclude from the subpoena as irrelevant to any of the issues in this proceeding the respondent's records showing its domestic acquisitions from 1946 to the date of the subpoena, its advertising and promotional expenditures, including designated surveys and advertising research reports, concerning certain products recently acquired or developed by the respondent, for the years 1952 through 1957, and the records of The Clorox Chemical Company showing its domestic acquisitions from 1952 through 1957; and to limit to material actually used in 1956 and 1957 the subpoena's demand for production of The Clorox Chemical Company's 1952-1957 records showing the company's merchandising practices, the prices of its products, the geographical areas served by each of its producing facilities and the dollar volume sales in each such area, and samples of the labels and wrappers used on each of its products; and

The Commission having considered the matter in the light of all of the circumstances, including the allegations of the complaint, with particular reference to the nature of the acquisition charged to have been unlawful and the scope of the inquiry concerning the potential effects on competition which is necessary, and having reached the conclusion that the records and documents excluded from

the subpoena are generally relevant to the basic issues involved in the proceeding and, further, that a requirement for their production need not expand the case beyond manageable proportions:

IT IS ORDERED that the hearing examiner's rulings granting in part the respondent's motion to limit or quash the subpoena as aforesaid be, and they hereby are reversed, it being understood, however, that this does not constitute a ruling on the respondent's contention that the requirement for the production of certain of said records and documents is an unreasonable burden on the respondent and involves an unnecessary disclosure of its trade secrets, or a determination of the admissibility of any of the records or documents into the record as evidence, neither of which questions was involved in the appeal.

By the Commission.

/s/ ROBERT M. PARRISH
ROBERT M. PARRISH,
Secretary.

[SEAL]

ISSUED: March 26, 1958

[Caption Omitted]

ORDER RECEIVING EXHIBIT INTO EVIDENCE

(Filed March 26, 1959)

This matter comes on to be heard on motion of counsel supporting the complaint, filed on March 17, 1959, to receive Commission Exhibit 710 A-B into evidence pursuant to ruling of the Hearing Examiner at record page 6028 wherein he reserved that Commission exhibit number for certain statistical data coming from the American Stores Company, Philadelphia, Pennsylvania, and which

appears attached to said motion in the form of a letter signed by A. E. Gilfillan, Legal Department, American Stores Company, as to whom a stipulation had been made with respect to similar data (R. 6029-6031), said letter being on the letterhead of the American Stores Company dated March 12, 1959, addressed to Thomas A. Deveny, III, Trial Attorney, Federal Trade Commission, and purporting to furnish purchases by cases and dollar amounts of Speedup, 101 and Clorox for the two respective periods January 1, 1957, through November 30, 1957, and January 1, 1958, through November 30, 1958, this data being offered in rebuttal of the testimony of Mr. George Bennett. It appears to the Hearing Examiner that the proposed exhibit complies with the statement made on the record at the time Exhibit No. 710 was reserved. Accordingly,

IT IS ORDERED that the photostatic copy of the letter of A. E. Gilfillan dated March 12, 1959, addressed to Thomas A. Deveny, III, hereinbefore described, be, and the same hereby is, received in evidence as Commission Exhibit 710 A-B.

/s/ EVERETT F. HAYCRAFT
EVERETT F. HAYCRAFT,
Hearing Examiner.

March 26, 1959.

[Caption Omitted]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS FILED BY RESPONDENT, THE PROCTER & GAMBLE COMPANY

(Filed May 8, 1959)

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[Caption Omitted]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS FILED BY RESPONDENT, THE PROCTER & GAMBLE COMPANY

(Filed May 8, 1959)

To The Honorable Everett F. Haycraft, *Hearing Examiner:*

Pursuant to Rule XIX of the Rules of Practice of the Federal Trade Commission, the respondent, The Procter & Gamble Company, in the above entitled proceeding, by its attorneys, submits to the Hearing Examiner its proposed findings of fact and conclusions for his consideration and respectfully requests that the Hearing Examiner find the facts accordingly and include these proposed findings and conclusions in his initial decision as his findings and conclusions.

The proposed findings are based directly on the record references cited in support thereof.*

(i) STATEMENT OF THE PROCEEDINGS

The Complaint in this proceeding was issued on September 30, 1957, charging that The Procter & Gamble Company had violated and was violating Section 7 of the Clayton Act (U. S. C. Title 15, Sec. 18) as amended December 29, 1950, by its acquisition on August 1, 1957, through its wholly-owned subsidiary, The Clorox Company, of the assets and business of Clorox Chemical Co. Specifically, the Complaint alleged that the acquisition "may have the effect of substantially lessening competition or

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* "Tr." as hereinafter used refers to the Stenographic Transcript of the record in this proceeding. Citation to testimony is by name of the witness and the page of the transcript.
"CX" as hereinafter used refers to Commission's Exhibits.
"RX" as hereinafter used refers to Respondent's Exhibits.

tending to create a monopoly in the production and sale of household liquid bleaches in the United States."

In its Answer, filed November 4, 1957, respondent denied all charges of illegality contained in the Complaint.

The taking of evidence commenced in Cincinnati, Ohio, on December 16, 1957. Additional hearings were held in San Francisco, Los Angeles, Chicago, Philadelphia, New York, Boston, Buffalo, Detroit and Washington, D. C. Complainant closed its case-in-chief on August 26, 1958.

Respondent presented its case at hearings held in Washington, D. C. on November 17-26, 1958 and January 5-9, 1959.

Complainant's rebuttal case was presented in Washington, D. C. commencing January 26, 1959.

The hearings were concluded on February 12, 1959, when each party stipulated that its case was closed.

[Note: Respondent's case was closed insofar as it involved its understanding of all issues and contentions raised by complainant. In an effort to insure that all matters relied upon by complainant would be directly in issue, respondent requested from time to time that complainant be required to furnish a full and detailed statement of its contentions (see, for example, Tr. 3874-79; 3909-11; 5007). The complainant has not made or purported to make such a statement.

Furthermore, the complainant has not stated or purported to state its full contentions with reference to and based on many of the numerous documents which have been introduced in evidence, and in many cases has failed to designate the parts of the documents upon which it relies (see, for example, Tr. 1615-18).

While the Hearing Examiner has not required the complainant to make, during or at the close of the hearing, a full statement of its contentions, he has

ruled that if the complainant raises any issue or makes any contention which was not called to the attention of the respondent, the respondent may have an opportunity to answer any such issue or contention, if not actually anticipated or contemplated (Tr. 3914-15).

As to documents, the Examiner ruled during the hearings that the respondent should be immediately advised of the purpose of any document if such purpose had not previously been stated (Tr. 930-31; 1134-35; 3849-50). Furthermore, the Examiner has stated that he will not permit any "ambush" or surprise (Tr. 3914-15; 5362).

If it should occur that complainant does advance contentions not heretofore raised or made clear to the respondent, request will be made to the Hearing Examiner for permission to file supplemental findings as to these contentions. Furthermore, if the purpose of documents or the designation of the parts to be relied on or the contentions to be made thereunder have not been stated, and are referred to in the complainant's proposed findings or briefs, the respondent will ask, first, that these documents and the contentions thereunder be ignored or, if this is not so ordered, that respondent be permitted to file supplemental findings relating to the matters not previously designated or called to the respondent's attention.

While the Hearing Examiner's rulings are broad enough to cover the introduction of further evidence on the part of the respondent as to any such matter, contention or document, every effort will be made to avoid such course in order that the final disposition of the proceeding may not be delayed.]

(ii) PRELIMINARY STATEMENT

In submitting the following proposed Findings of Fact we think it in order preliminarily to state our concept of the issues to which the Findings are directed.

A. The legality of the acquisition here in question must be tested in the light of its probable *future* effect on the bleach industry as that industry existed at the time of the acquisition. In other words, the pre-acquisition market position of Clorox Chemical and all other aspects of its business must be accepted as perfectly legal and proper. Likewise the market trend of Clorox, established over the years, must be considered proper, lawful and one which would have probably continued regardless of the acquisition.

This initial premise is particularly indisputable in this case. For here there is no suggestion that Clorox Chemical in attaining its position ever resorted to any improper conduct or ever engaged in any exclusionary or predatory practices. Nor did it achieve its position by the acquisition of any competing companies.

Thus the fact that Clorox Chemical, at the time of the acquisition, had the largest single share of the liquid bleach business in the United States and that such share was steadily increasing, is without significance as such.*

B. In gauging the effects of the acquisition under Section 7, the starting point must be whether there is a *reasonable probability* that Procter's acquisition of Clorox, as distinguished from Clorox's continued independent operation, would substantially lessen competition or tend to

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* As succinctly stated by the Hearing Examiner (Tr. 2591-2):

"As I pointed out numerous times, what we are interested in is what the situation was at the time that this acquisition took place. We certainly can't hold the respondent responsible for competitive conditions in this industry before it acquired the Clorox Co.

* * *

"Mr. Tincher: * * * as we allege in our complaint and as I believe the evidence is showing, the Clorox Chemical Company on its own, without the aid and assistance of Procter & Gamble was gradually pulling away from the liquid bleach market.

"Hearing Examiner Haycraft: So what? We can't hold the respondent responsible for that."

monopoly. We emphasize that the question is not one of the mere *possibility* that the forbidden effects might occur. This is apparent from the wording and background of Section 7 itself. The Commission, *In the Matter of Pillsbury Mills, Inc.*, 50 FTC Decisions, 555, at 568, adverted to this, saying:

> "The House and Senate Committees also took the occasion to make clear that 'may be' means reasonable 'probability' not 'possibility.'"

And quoting from the Senate Report the Commission, at p. 569, said:

> "The use of these words ['may be'] means that the bill, if enacted, would not apply to the mere possibility but only the reasonable probability of the prescribed [sic] effect, as determined by the Commission * * *"

The rationale of this distinction is apparent. The Congress never intended that the applicability of Section 7 was to be determined on the basis of abstract guesswork as to what might be possible. If such a nebulous standard were adopted, there could always be conjured up "possibilities", without relation to realities, which would condemn any merger.

So here the initial approach must be whether, in the light of Clorox Chemical's existing position at the time of the acquisition the complainant has shown, by a preponderance of the evidence, that there is a reasonable probability that the proscribed adverse competitive effects would *be caused by and would be attributable to the acquisition.*

C. It is in the light of the foregoing considerations that the question of "power" must be considered. The Hearing

Examiner has commented from time to time during the hearings upon the relevancy of Procter's "power" in relation to the business and activities of Clorox. But in using the term "power", and evaluating its significance here, it is essential to define the sense in which the word is used.

1. In the first place, we regard it as self-evident, but legally immaterial, that Procter now has the "power", as the sole stockholder of Clorox, to control its management and operations. This is simply the obvious result which flows from the corporate ownership of any subsidiary company. Plainly, such "power", in and of itself, is decisive of nothing respecting anti-competitive effects.

2. Nor can the word "power" be applied in any determinative sense under Section 7 to a situation in which the acquiring company has much larger total financial resources than the company which has been acquired. Comparative balance sheets are not the standards by which an acquisition is to be judged under Section 7. For had this been intended, Congress could very simply have said that no larger company could ever acquire a smaller one. And, moreover, in this proceeding, under such a test, the matter could have been decided on the pleadings. So we emphasize that "reasonable probability" of anti-competitive effects cannot be inferred or presumed by reason of the fact that the business of the acquired company may have available to it additional financial means.

Even if the law were otherwise, it would not be applicable in this case. For Clorox Chemical was not a company which sought or needed any increased financial support from Procter. The evidence clearly establishes that Clorox Chemical was an eminently successful company; that its operations had been profitable; and that, at the time of the acquisition, it had more than adequate surplus funds

to enable it to promote and expand its business to any extent which its management could reasonably consider appropriate or desirable.

We submit, therefore, that it cannot be concluded that any theoretical "power" stemming from the availability of unrequired and unnecessary financial reserves is evidence of a violation of Section 7. As said by Examiner Hier *In the Matter of Union Carbide* (August 18, 1958):

> "All that is here essentially, is that in this market two commercial strangers have united and the product of one, sausage casings, now has the financial backing of a billion and a half dollars of assets (1957) instead of something less than 100 million formerly, and that, ergo, this financial power can be used to drive everyone else out of the market. Such a forecast on this loose and spotty record calls for a temerity and clairvoyance which I do not possess. The verdict is a Scotch one—not proved, and accordingly the motion to dismiss this portion or charge of the complaint is well taken and will be granted."

In fact, the Hearing Examiner in the instant case struck, as irrelevant, Mr. Morgens' testimony that the financial status after the acquisition did not furnish to Clorox any needed or usable resources or provide it with any competitive "power" that it did not already have.

3. There remains, we believe, only one possible concept of "power" which could be significant in the determination of this case. That concept is indicated in the following determinative questions, i.e.: What has the acquisition of Clorox Chemical by Procter injected into the liquid bleach industry which points to any reasonable probability of anti-competitive effects? What added "power" is there which might reasonably be applied so as to lessen competition or tend to monopoly?

The burden upon complainant to establish such "power" by more than mere speculation is magnified by the nature of this acquisition. For here, there is no contention that there are any direct anti-competitive effects on the "horizontal" level (a controlling factor in most decisions under Section 7). The element of the absorption or elimination of a competitor, which automatically results in some lessening of competition and some increase in the market position of the acquiring company, is wholly lacking. Nor is there any contention that the acquisition could have any effect on the "vertical" or customer-supplier level.

We are thus left with the necessity of determining whether, in this instance of a "conglomerate merger", the evidence can be said to sustain complainant's burden of proof as to the claimed violation.

In this evaluation of the evidence we urge again that the concept of what is "*reasonable*" must be an all-important factor. This is true whether the evidence is considered in terms of "probabilities" or "power". For in assaying either point it must be assumed that any "power" which could be said to flow from the acquisition would be exercised *reasonably* and in line with good business judgment —not capriciously, recklessly or maliciously.

D. Consequently, our proposed Findings are directed to those lines of inquiry which deal specifically with every contention and implication advanced by complainant as to the respects in which any anti-competitive effects might probably be anticipated. We here set forth those general lines of inquiry *—the answers to which, as we view it, must be controlling of the decision in this matter.

* Embraced in the following lines of inquiry are all of the claims set forth in Paragraph Fifteen of the Complaint as to the respects in which the acquisition might effect a substantial lessening of competition or tendency to create a monopoly.

Preliminary Statement

1. Is there a reasonable probability that the acquisition will have any anti-competitive effects in the manufacture of liquid bleach?

[Note: The evidence which we will cite in the following Findings shows that the acquisition has added nothing to Clorox's manufacturing facilities or capacities. There is no evidence that it has or will result in any diminution of manufacturing or shipping costs, or will furnish any needed manufacturing capacity, or any other advantages. There are no patents held by either Clorox or Procter affecting the manufacture of liquid bleach. Engaging in the manufacture of this product is a relatively simple and inexpensive operation and there are numerous companies of varied financial status engaged in the business.]

2. Will the acquisition result in advantages in the marketing of liquid bleach which would not have been available had the acquisition not occurred, and which will adversely affect the ability of other bleach producers to compete?

[Note: The evidence to which we will refer establishes that the acquisition has added nothing to Clorox's marketing capacity. It is uncontradicted that no marketing "power" attaches to Clorox through any "full line forcing" resulting from a combination of Clorox and other Procter products.** The same applies to any added ability to "command" or secure shelf space or "in-store" displays, or to enhance Clorox's position by any "tie-in" with Procter products. The evidence also rebuts any suggestion that Clorox has secured any prestige or added consumer acceptance because of its association with Procter. In addition, such evidence as there is in the record on the

** Indeed, we think that complainant itself has actually abandoned any charges it may have had in mind in this connection.

subject refutes any contention that any change in Clorox's established method of distribution [i.e., through brokers rather than direct salesmen] would produce any advantages or is probable.]

3. Has Clorox obtained any significant advantages in advertising or promotion which were not available to it in the absence of the acquisition?

[Note: There is no evidence that by reason of the acquisition Clorox has acquired any unique advertising or promotional "know-how" or techniques. As subsequent record references show, there is no question but that every advertising and promotional device which anyone has suggested as being appropriate for liquid bleach has been well known and available for many years. Furthermore, the history of Clorox Chemical prior to the acquisition demonstrates that its own advertising and promotional activities in the liquid bleach industry had been most effective and had enabled it to secure and maintain an established position. There is no evidence that its acquisition by Procter has or can in any wise enlarge or expand Clorox Chemical's demonstrated ability in these respects.]

4. Has Clorox's financial ability to advertise and promote its product been enhanced so as to point to a reasonable probability that any anti-competitive effects would result?

[Note: The evidence to which we hereinafter advert shows that Clorox's position has in no way been advanced by the fact that additional funds may theoretically be available for advertising and promotional expenditures. It shows that Clorox Chemical before the acquisition had adequate surplus funds to finance any reasonable program. Further, it shows that the

"per case" expenditures of Clorox Chemical have proved adequate on the basis of past experience, and that no increase is considered desirable or is contemplated. While the evidence shows that certain savings will result, in connection with TV and other advertising media, such savings are of no consequence in relation to over-all advertising expenditures and cannot be said to afford any substantial advantage. In fact, such savings are considerably less than increases in advertising costs which have occurred since the acquisition.]

5. Is there a reasonable probability that, *because of the acquisition*, Clorox's market position will be improved so as to affect the ability of other producers to compete?

[Note: The evidence is uncontradicted that in the five years prior to the acquisition Clorox's absolute sales and its share of the total sales of household liquid bleach in the United States had steadily and consistently increased. The evidence also shows that total sales by all producers of household liquid bleach in the United States has steadily and consistently increased and that this trend has continued in the year after the acquisition. We, therefore, think it reasonable to assume that had there been no acquisition the Clorox market position would have improved as had been the case in the preceding four years.

In the light of this background, and treating with twelve months subsequent to the acquisition [and the same applies to all of the evidence subsequent to the acquisition], it is abundantly clear that the acquisition has in no wise enhanced Clorox's position or adversely affected the business of its competitors. Indeed, Clorox's market share in the year subsequent to the acquisition of 0.3% is relatively so small as to be almost *de minimis*].* Moreover, this small increase is

* Even if Clorox's market share increase had been much greater, this would simply conform to the trend which had been in effect prior to the acquisition.

substantially less than the steady increases in each of the four years prior to the acquisition.

The record also shows that in the year following the acquisition the dollar sales of liquid bleach by Clorox's largest competitor increased more than $1,200,000—the largest increase in the business of that competitor in any of the preceding five years. In addition, the uncontradicted statistical evidence shows that the dollar sales of all other competitors, as a group, increased in the year subsequent to the acquisition, and that the market shares of such competitors were substantially unchanged.

These facts must also be evaluated in the light of the evidence which shows that, in the period subsequent to the acquisition, Clorox engaged in various added promotional plans and programs to meet growing competitive efforts of other producers. This evidence and the explicit testimony of respondent's witnesses effectively rebuts any implication that there has been any "holding back" because of the pendency of this proceeding.]

The foregoing sets forth our analysis of the controlling issues. In certain respects the evidence introduced by both parties related to other subordinate issues, some of which will also be the subject of proposed Findings. Basically, however, we believe that the decision here must be determined by the answers to the inquiries set forth above. And in arriving at those answers we urge that vague, abstruse and unsupported speculations by complainant or by Clorox's competitors are no substitute for proof.

E. We conclude this Preliminary Statement by the following comparison of the factors which have been found to be controlling in other Section 7 cases which have been before the Courts and the Commission and those which are present here:

Preliminary Statement

1. *The removal of a substantial competitor.* Where this factor exists it, of course, has resulted in the deprivation of the consuming public of the benefit of pre-existing competition.

No such element is present in the instant case.

2. *Increased share of market resulting from the acquisition.* The acquisition of a competitor necessarily increases the combined market share of the acquired and acquiring company.

In the instant case the acquisition, as such, in no way added to Clorox's volume of business or market share.

3. *Entries in the market.* In certain cases there has been evidence of a substantial diminution in the number and business of competitors, sometimes because of aggressive competitive practices made possible by the acquisition.

In the instant case there is no proof that there have been any substantial withdrawals from the market. Nor is there any evidence that sales of competitors have declined or have been affected by reason of the acquisition. To the contrary, there have been increased sales by and expansions on the part of existing competitors.

4. *Lessening of competition.* In certain instances it has been found that the number of competing products has been reduced by reason of promotional activities stemming from the acquisition. There has also been the factor that lessening of competition has resulted from competitive methods described as "predatory" or "guerrilla" which resulted "*by reason* of the acquisition."

In the instant case there is no evidence that there has been any diminution in the number of independent brands of bleach offered for sale in chains and supermarkets. Nor is there ony proof that independent competitors have been or probably will be prevented from competing for consumer preference. In addition, the policies and practices

used in the marketing of Clorox, both before and after the acquisition, negative any probability of any "predatory pricing" or other unfair practices.

5. *Oligopolistic aspects of an industry have been increased.* In certain cases it has been noted that the acquisition would further advance oligopolistic tendencies in an industry.

In the instant case, of course, the acquisition in no wise affected the structure of the bleach industry from the standpoint of oligopoly, or otherwise. Procter simply took over the position of Clorox. Nothing was added by the acquisition.

6. *Increase in "economic concentration."* We submit that "economic concentration," as used in decisions in Section 7 cases, relates solely to concentration within the particular industry or line of commerce claimed to be affected. It is the type of concentration brought about, for example, by the proposed combination of two of the largest units in the steel industry. It is also illustrated by the combination of two of the largest units in the family flour industry.

It is obvious that no such "concentration" in the bleach industry has resulted from the acquisition here in issue. We think it plain that the word "concentration" in its Section 7 sense cannot properly be applied to a situation in which one company in an industry is acquired by another company which is not a competitor and is in no way engaged in that industry. In other words, no proscribed "concentration" results from the simple fact that an acquisition results in greater combined assets for the acquiring company.

We maintain that the foregoing considerations point up the failure of complainant here to sustain its burden of proof or to establish that there has been any violation of Section 7.

PROPOSED FINDINGS OF FACT

I. Description of the Respondent

1. Respondent, The Procter & Gamble Company ("Procter") is a corporation organized under the laws of the State of Ohio with its office and principal place of business in Cincinnati, Ohio.

Record support: Complaint and Answer, Par. 1.

2. Procter and various of its subsidiaries are engaged principally in the manufacture and sale of soaps and detergents. They also manufacture and sell some food products (including meat food products), paper products, shampoos, dentifrices and home permanents.

Record support: Complaint and Answer, Par. 3.

3. Procter is the largest producer in the United States of soap and detergent products and one of the major producers in its other principal product fields.

Record support: Morgens, Tr. 458; Complaint and Answer, Par. 3.

4. The more important consumer household brands manufactured by Procter and its subsidiaries are sold to retail and wholesale grocery and drug outlets, department stores and variety stores.

Record support: Complaint and Answer, Par. 3.

5. Procter is one of the leading national advertisers in the United States and expends large sums of money in advertising and promoting many of its products in the household soap, detergent, food and toilet goods fields, as do other companies engaged in producing like products.[1]

Record support: [1] CX 447; Stoneman, Tr. 1629-36, Tr. 1830-35; Complaint and Answer, Par. 3.

Procter's overall expenditures for the advertising, in the United States, of approximately 35 products[2] manufactured by it and sold under brand names were somewhat in excess of $79,000,000[3] (the figure alleged in the complaint) for its fiscal year 1957.

Record support: [2] Complaint and Answer, Par. 3.
[3] Compaint and Answer, Par. 12; CX 342.

6. As of June 30, 1957, Procter had 19,868,664 shares of stock outstanding; had total assets of $688,272,623; liquid assets[1] of $104,149,569; liabilities of $218,575,677; prior earnings invested in its business of $389,303,033; and for the year ending June 30, 1957 had consolidated net earnings of $67,807,376.[2]

As of June 30, 1958, Procter had 20,561,465 shares of stock outstanding; had total assets of $755,991,432; liquid assets of $106,133,986; prior earnings invested in its business of $421,567,210; liabilities of $221,434,005; and for the year ending June 30, 1958 had net consolidated earnings of $73,196,618.[3]

[Note: As indicated by the foregoing proposed finding, Procter is, of course, a "large" company. It is our position that "financial bigness" as such is in no way determinative of any issue properly raised in a Section 7 case. This was pointedly stated *In the Matter of Union Carbide*, where the acquiring company had assets of a billion and a half dollars. The financial resources of the acquiring company can have significance only when there is proof that the business of the acquired company needed or could profitably use access to increased assets, or that there was a reasonable

Record support: [1] Determination of liquid assets is arrived at by adding cash and marketable securities.
[2] Respondent's Answer, Par. 11; CX 6, pp. 6, 8, 9, 10.
[3] CX 702, pp. 6, 8, 9, 10.

probability that such increased assets would be used to bring about a lessening of competition or a tendency to monopoly. The proof is to the contrary in this case.]

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7. Such increase in size as Procter has enjoyed over the years in its principal product fields has been largely the result of internal growth and it has made no acquisitions in such fields since World War II. The only acquisitions which Procter has made since the end of World War II (other than the acquisition of Clorox Chemical Co.) have been three in number and have been in fields in which Procter had not theretofore been engaged, to wit, W. T. Young Foods, Inc. (peanut butter and peanut products), Duncan Hines (Nebraska Consolidated Mills, baking mixes), and Charmin Paper Mills, Inc. (paper products). There is no proof that any of such acquisitions account for any substantial part of Procter's business.

Record support: Complaint and Answer, Par. 7; Morgens, Tr. 473, 636, 645, 649; CX 6, p. 3.

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8. There is no proof that any of Procter's acquisitions referred to in Finding 7 above have resulted in any lessening of competition or any tendency to monopoly in respect of any of the lines of commerce or in any of the markets in which Procter is engaged in business.

9. There is no proof that in achieving or maintaining its position in the fields in which it transacts business, Procter ever engaged in any improper, predatory or exclusionary practices.

II. The Challenged Acquisition of Clorox Chemical Co.

A. Description of Clorox Chemical Co.

10. The Clorox Chemical Co. ("Clorox Chemical") was, prior to August 1, 1957, a corporation organized un-

der the laws of the State of Delaware, with its office and principal place of business in Oakland, California.

Record support: Complaint and Answer, Par. 2.

11. Clorox Chemical, prior to August 1, 1957, was engaged in the production and sale of 5¼% sodium hypochlorite liquid bleach and disinfectant under the trade name "Clorox".

Record support: Complaint and Answer, Par. 8; Morgens Tr. 492.

12. At that time, and since at least 1952, Clorox Chemical was the largest producer of household liquid bleach in the United States.

Record support: Complaint and Answer, Par. 8; Morgens, Tr. 483; Trimpe, Tr. 4238.

13. Clorox Chemical had thirteen plants for the manufacture and bottling of household liquid bleach, located at Atlanta, Georgia; Boston, Massachusetts; Camden, New Jersey; Charlotte, North Carolina; Chicago, Illinois; Cleveland, Ohio; Houston, Texas; Jersey City, New Jersey; Kansas City, Missouri; Los Angeles, California; Oakland, California; Seattle, Washington; and Tampa, Florida.

Record support: Complaint and Answer, Par. 10.

14. Net sales of Clorox Chemical for the fiscal years ended June 30, 1952 through June 30, 1957 were as follows:

1952	$23,625,026
1953	$27,714,435
1954	$30,284,650
1955	$33,874,181
1956	$36,409,197
1957	$39,999,114

The foregoing net sales figures represent almost entirely sales of household liquid bleach which, with the exception of a small amount of industrial bleach, has always been Clorox Chemical's only product.

Record support: CX 7, 8, 9, 10, 11 and 12; Morgens, Tr. 493.

15. The net sales of Clorox Chemical reflect a steady, continuous and substantial growth in each of the years during the period 1952 through June 30, 1957.

Record support: Complaint and Answer, Par. 10; CX 7, 8, 9, 10, 11 and 12.

16. In each of the years during the period from August 1, 1952 through July 31, 1957, there was a steady and continuous growth in Clorox Chemical's market share of all household liquid bleach sold in the United States through grocery stores. Such market shares were as follows:

Year Ending July 31	*Clorox Brand Share*	*Change in Share*
1953	45.3%	—
1954	46.4%	1.1%
1955	47.1%	0.7%
1956	47.7%	0.6%
1957	48.4%	0.7%

[Note: This steady and continuous growth in market share, and the rate of such growth, must be contrasted with the growth in market share in the year following the acquisition. As will appear in subsequent findings, such increase was only 0.3% of one Nielsen competitive point. As is evident from the above figures, this was the lowest increase experienced by Clorox Chemical in the entire period from 1952 through July 31, 1957; and represented only

one-half or less of the growth experienced in any one of the prior five years.]

Record support: RX 94.

17. As of June 30, 1957, Clorox Chemical had liquid assets of $3,900,047 and an earned surplus of $7,127,015.

Record support: CX 12, p. 2; Determination of liquid assets is arrived at by adding cash and marketable securities.

18. There is no proof nor is there any claim that Clorox Chemical ever acquired a competing liquid bleach company or any other company. There is no proof nor is there any claim that its growth and the achievement of its position in the bleach industry were due to any factors other than the industry, resourcefulness and ability of its founders and executives.

19. There is no proof nor is there any claim that Clorox Chemical in achieving or maintaining its position in the bleach industry ever engaged in any improper, predatory or exclusionary practices.

B. THE ACQUISITION AGREEMENT AND THE PRICE PAID

20. Pursuant to an agreement dated May 28, 1957 between Clorox Chemical and Procter, Clorox Chemical agreed to exchange and transfer substantially all of its assets and business as a going concern to Procter on the terms, conditions and provisions set forth in such agreement. Said agreement provided, among other things, that the closing of such exchange and transfer, subject to prior approval by Clorox Chemical's stockholders, would be August 1, 1957.

Record support: CX 27.

Proposed Findings of Fact

21. To implement the transaction Procter caused a wholly-owned subsidiary named The Clorox Company ("Clorox") to be incorporated under the laws of the State of Ohio. On August 1, 1957, this subsidiary, pursuant to the plan of reorganization set forth in the said agreement, exchanged 639,578 shares of Procter's fully paid and non-assessable $2 par value common stock (about 3.1% of the issued and outstanding stock) for substantially all of the assets and business as a going concern of Clorox Chemical. Clorox Chemical was dissolved and the Procter stock received by it was distributed among Clorox Chemical's stockholders.

Record support: Complaint and Answer, Par. 9; CX 702, p. 10.

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1. *The acquisition was initiated by Clorox Chemical and the price paid was fair.*

22. The negotiations leading up to the agreement of May 28, 1957, were initiated by Hellman of J. Barth & Company, investment brokers acting on behalf of Clorox Chemical, and not by Procter.

[Note: With those principally interested as stockholders in Clorox Chemical reaching or nearing the age of retirement (CX 28, page 3; also see Finding 90 *infra*), it was natural for them, in their own interest and that of their estates, to dispose of their stock holdings for easily marketable securities (Feigenbaum, Tr. 1178-79; CX 28, page 14; see also, Secs. 358 and 368 of the Internal Revenue Code). The Hearing Examiner will take judicial notice that such a sale to other than a large company, is difficult, if not impossible, and that in the absence of such an opportunity, stockholders in smaller companies will be prejudiced and deprived of an opportunity to realize the full value of a business which through their

efforts over a period of years has grown and prospered.]

Record support: Feigenbaum, Tr. 1208-10; 1172-75.

23. There is no proof nor is there any claim that the price paid for the assets of Clorox Chemical was arrived at other than through arms-length negotiation, or represented other than a fair price for the purchase of a company of the size, earning power and repute of Clorox Chemical. Indeed there is affirmative evidence demonstrating that the price was fair.[1]

[Note: The above proposed Finding is amply supported by the record. Respondent, during the examination of its witness Hellman, proposed to demonstrate affirmatively that the price paid by Procter was a fair price (Tr. 4833). Before interrogating the witness, the following colloquy appears in the record:

"MR. ROYALL: If they will stipulate or agree that the price we paid with Procter and Gamble stock, which they say is worth $30,300,000, was a fair value for the assets of the Clorox Chemical Company, we will have no question.

"HEARING EXAMINER HAYCRAFT: I don't know that they have to say that. But I would like to know wherein they can make such contention that you talk about. There is no contention here that you paid too much for the stock. [Tr. 4827-28.]

* * *

"HEARING EXAMINER HAYCRAFT: What is your contention? What are you going to argue to me? Are you going to say that Procter and Gamble allowed more than they should have for that goodwill?

Record support: [1] CX 28, page 13. For example, Clorox Chemical dividends at the time the exchange ratio was determined were 85% of Procter dividends, or exactly the ratio of the stock exchange.

"MR. TINCHER: I am going to say that the goodwill and trademark was worth the difference between $30.3 million and the value of the assets.

"HEARING EXAMINER HAYCRAFT: That is your contention?

"MR. TINCHER: Yes, sir. That doesn't say they paid more than they should have or less than they should have.

"HEARING EXAMINER HAYCRAFT: As I get it, you are saying that it was neither way?

"MR. TINCHER: That is right. I don't think it is material or relevant.

"HEARING EXAMINER HAYCRAFT: On that basis, Mr. Royall, if he is not going to make the contention that you paid too much for the business of Clorox, why should we worry about it?

"MR. ROYALL: Your Honor, there must be some trick in it. They wouldn't——

"HEARING EXAMINER HAYCRAFT: I have myself on record here. I have asked the question and I will tell you now that based on the evidence that is in the record, and what he just now said, I am not going to allow any such argument. I am not going to make a finding of that kind." (Tr. 4829-30.)

Later in the proceedings complainant introduced the annual statement of Procter for the year ending June 30, 1958, and adverted to the increase in the Procter "Goodwill, Patents and Licenses" account. (Tr. 5954) Any such increase is immaterial. Even if there were proof that such increase was attributable to the purchase of Clorox Chemical, it was merely a book entry and would have resulted from normal treatment of the difference between the selling price and the net value of the physical assets on Clorox Chemical's books of record.]

24. There is no proof that Procter was not justified in believing that the price paid for Clorox Chemical represented a sound investment in view of the proved earning power of that company. Likewise, there is no proof that Procter acquired Clorox Chemical for the purpose or with the intent of lessening competition or eliminating competitors or creating a monopoly.

[Note: The Hearing Examiner indicated at Tr. 1210-11 some of the factors pertinent to the motives of Procter in acquiring Clorox Chemical which might be relevant in establishing the complainant's contentions. There was, however, no proof by complainant of any such factor or of any other improper consideration applicable to the purpose of, or motive for, the acquisition.]

Record support: CX 28, pp. 12-13.

C. No "Horizontal" or "Vertical" Merger Aspects Are Involved In the Acquisition.

25. Prior to the acquisition Procter did not compete in the household liquid bleach market and none of its products was competitive with household liquid bleach.

Record support: Complaint and Answer, Par. 11.

26. There is no proof nor is there any claim that prior to the acquisition Procter sold any products to manufacturers engaged in the production of household liquid bleach or that Procter was a customer for any products of any manufacturer engaged in the production of household liquid bleach.

III. The Structure of the Bleach Industry

A. The Line of Commerce

27. Complainant has claimed that household liquid bleach (as distinguished from the entire household bleach market,

both liquid and dry) is the line of commerce against which the effects of the acquisition should be measured. Complainant has, however, failed to submit any proof establishing that household liquid bleach alone constitutes the relevant market. Some companies (but not Clorox) which produce liquid bleach also produce dry bleach.

[Note: Purex manufacturers and distributes a dry bleach under the brand name Beads O'Bleach. CX 439 and 440; RX 114.]

Record support: Complaint, Par. 15; Morgens, Tr. 481-83; Brower, Tr. 2691.

28. Dry bleach represents a substantial part of the total household bleach market (approximately 10%).[1] Complainant has offered no proof as to the competitive effects of dry bleach upon the sales of liquid bleach; as to the length of time during which dry bleach achieved 10% of the total bleach market; or as to whether the sales of dry bleach are expanding; or as to the significance of dry bleach, in the future, as a competitive factor in the overall bleach industry.

Record support: [1] Morgens, Tr. 482.

29. Household liquid bleach is, however, a different line of commerce from soap, detergents and scouring cleansers.

Record support: Complaint and Answer, Par. 11.

B. The Section of the Country

(*Regional or National Market*)

30. Paragraph 8 of the complaint alleges a national market in household liquid bleach. The alleged market shares which complainant attributes to various producers of household liquid bleach sold through grocery stores are

percentages of an assumed national market. The complaint includes no allegations concerning one or more regional markets and no relief is requested as to any such markets.

31. There is no proof of a national market in the household liquid bleach industry. All the evidence, including that introduced by complainant, shows that there are a series of regional or local markets, the geographical confines of none of which have been shown with any exactitude.[1] Every bleach producer (except Clorox) called as a witness by complainant testified in effect that the household liquid bleach market was a regional, non-national market.[2] The weight of household liquid bleach packed for shipment results in high freight costs relative to the value of the product and necessarily restricts the region served by any one production facility. As a result, the liquid bleach industry consists of many bleach producers. In the main each producer markets its products in the regions in which it has manufacturing facilities and which it considers can be economically served by such facilities.[2] In consequence, differing competitive factors and conditions are to be found in each relevant regional market.[3]

Record support: [1] Stoneman, Tr. 1543-4; Hahn, Tr. 2172; Trimpe, Tr. 1320; Brower, Tr. 2712.
[2] Stoneman, Tr. 1523; Prescott, Tr. 2578, Brower, Tr. 2712; Gardiner, Tr. 2858; Jones, Tr. 2927-28; Riccardi, Tr. 3020; Mendleson, Tr. 3150; Giachetti, Tr. 2147; Kunin, Tr. 2349; Smooke, Tr. 1756-57.
[3] Trimpe, Tr. 1363.

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32. Clorox is the only bleach producer which sells household liquid bleach throughout the United States.[1]

Purex, Ltd., the second largest liquid bleach producer, marketed its brand of bleach in areas of the United States

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Record support: [1] Stoneman, Tr. 1543-44; Hahn, Tr. 2172.

containing 48% of the population, at the time of the acquisition of Clorox Chemical by Procter.[2] Since Purex's acquisition of Fleecy White, it now markets liquid bleach in areas of the United States containing 64% of the population.[3] All of the other members of the industry sell only in smaller regional or local areas.

Market shares based on national percentages are therefore meaningless as a measure of effective, realistic competition existing in various regional markets.

Record support: [2] Stoneman, Tr. 1524-25.
[3] Stoneman, Tr. 5712-13.

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33. In various regional or local markets where competition is vigorous and effective, a bleach manufacturer whose market share would be small on a national basis has a large and sometimes major share in his particular region or area of operation. For example, Linco whose operations are confined to the area in and about Chicago has about 45-50% of the liquid bleach market in that area.[1] Purex in the 7 western states (comprising the Pacific territory as reported in the Nielsen Food Index) has the largest share of the market.[2] Hilex, which is distributed in the Minneapolis territory is stronger than Clorox.[3]

> [Note: In subsequent proposed findings we will deal in greater detail with the competitive factors and shares in various regional markets, as well as the nature of the operations of the various competitors therein. The foregoing examples are set forth to indicate that market shares unrelated to regional situations are in no wise reflective of actual competitive conditions. See comments of Hearing Examiner, Tr. 4431-32.]

Record support: [1] Hahn, Tr. 2181.
[2] RX 87 and CX 681.
[3] Bellingall, Tr. 5180.

34. Complainant has the burden of proof in establishing the relevant market or markets or sections of the country in which the claimed lessening of competition might probably result. It has failed to show that a national market is the proper one against which the effects of the acquisition should be measured. It has also failed to show that there is any particular regional market in which any restraint or lessening of competition would probably result by reason of the acquisition. There is thus a failure of proof as to the extent or nature of the relevant market or markets in which it is claimed that any lessening of competition or tendency to monopoly might probably occur.

IV. The Acquisition Has Not Had and There Is No Proof That It Probably Will Have Any Effect Upon the Manufacture of Liquid Bleach, or Will Result in Any Lessening of Competition or Tendency To Monopoly in Respect of Such Manufacture

A. THERE ARE NO PATENTS CONTROLLING THE MANUFACTURE OF LIQUID BLEACH.

35. Neither Clorox nor Procter has any patents controlling or applicable to the manufacture of liquid bleach and there is no evidence that there are any patents in the field limiting in any way the manufacture of liquid bleach by anyone.

[Note: There was testimony to the effect that Clorox Chemical had a patent, or had applied for a patent, relating to the use of liquid bleach on nylon and rayon fabrics. The acquisition has not affected this one way or the other. The evidence showed that this so-called patent simply represented a development emanating from research conducted by Clorox Chemical related to a new use for Clorox. The nature of the new use was that Clorox bleach, when used with ordinary household vinegar, would remove the yel-

lowish cast that developed in all nylon and rayon fabrics after a period of exposure to air. It is clear that this so-called "use" patent had nothing to do with the manufacture of liquid bleach, nor could it restrict the use of vinegar with any other liquid bleach to accomplish the same purpose. Tr. 4250-51; 4266; 5033-34; 5187-89.]

Record support: Montgomery, Tr. 3936.

B. THE MANUFACTURING PROCESS IS RELATIVELY SIMPLE.

36. The manufacture of household liquid bleach is not highly technical but is a relatively simple process.[1] The process consists of introducing chlorine into a caustic soda solution, the resulting chemical reaction being one which forms sodium hypochlorite. By controlling the proportions of the basic ingredients, the sodium hypochlorite content of the solution is fixed as 5¼%, which is the strength of substantially all of the household liquid bleaches marketed, including Clorox. After the chemical reaction is terminated, as determined by chemical analysis, the solution is then permitted to settle so as to eliminate any impurities and is then bottled. The processing of the sodium hypochlorite solution is done in plastic or rubber-lined steel or iron containers.[2]

Record support: [1] Stoneman, Tr. 1540; M. Giachetti, Tr. 2145-46; Brower, Tr. 2711; Montgomery, Tr. 3933.
[2] Montgomery, Tr. 3930-32, 3937, 3985-86.

37. Information relating to methods and processes for the manufacture of liquid bleach, and improvements thereof, is published by large chemical companies which are engaged in the manufacture of the raw materials required, and is readily available to all who are in the industry or interested in entry.

Record support: RX 53, 54, 56; Montgomery, Tr. 3947-48, 3949-54.

C. THE COST OF THE PLANT AND EQUIPMENT REQUIRED TO MANUFACTURE OR PRODUCE LIQUID BLEACH CONSTITUTES NO BARRIER TO ENTRY INTO THE BUSINESS.

38. There is no evidence that any specially designed type of building is required for the manufacture of household liquid bleach. There is evidence that Clorox is manufactured in plants which are warehouse types of buildings, each consisting of a small office, a processing portion, a bottling portion in which there is the bottling line, and warehousing space for the produced stock.[1] There is evidence that equipment required for the production of sodium hypochlorite solution is readily available at reasonable costs[2] and there is no evidence that the machinery and equipment required for a plant of any given capacity is not readily procurable.

The complainant, which has the burden of proof as to any claims of difficulties in entry to the market, has offered no direct evidence as to the cost of a plant and equipment for the production of household liquid bleach in substantial commercial quantity. Various witnesses testified concerning this in general terms, but the complainant did not offer the records of any bleach manufacturer as to the actual capital investment which it had in its plant. Of the various witnesses who testified, Stoneman of the Purex Company stated that the capital investment for a liquid bleach plant would not be great.[3] Giachetti of the Linco Company stated that the machinery involved is not "expensive; it is costly", and estimated that the equipment in the Linco plant was worth about $250,000.[4] Jones testified that the equipment was expensive and estimated that

Record support: [1] Montgomery, Tr. 3956-57.
[2] M. Giachetti, Tr. 2146.
[3] Stoneman, Tr. 1565.
[4] M. Giachetti, Tr. 2146.

the equipment in his plant would cost about $50,000.[5] Based upon the foregoing inconclusive testimony, it must be found that the cost of a plant for the manufacture of household liquid bleach on a scale comparable to that of the bleach companies from whom testimony was offered by complainant would be substantial but in no wise prohibitive.

[Note: We urge that the complainant in this case as in all other Section 7 cases, has the burden of establishing that entry into the market in the manufacturing sense is difficult if any such point is to be urged in support of the complaint. With respect to plant and equipment cost, complainant, if so minded, and if it intended to rely upon this point, could readily have introduced through the representatives of competitive bleach manufacturers the actual cost of the various plants of these manufacturers. Except for the few general statements as to equipment cost, referred to above, it wholly failed to make any showing in this respect. In this state of the record we submit that no burden rested upon respondent affirmatively to produce such evidence.

It should be noted, however, that respondent proffered, through its witness Montgomery, evidence to the effect that the cost of a plant and equipment having a capacity of 250,000 cases of liquid bleach per year would be $120,000, including the purchase of land and the construction of a building; and that if the building were leased the cost of a plant of such size would be about $60,000; and that a plant having a capacity of 400,000 cases per year would cost approximately $5,000 more. (Tr. 3963-64)].

Record support: [5] Jones, Tr. 2943-44.

39. In addition to the household liquid bleach manufacturers who have plants for the production of sodium hypochlorite solution, the complainant introduced testimony

from two household liquid bleach companies selected by complainant showing that in order to enter into the liquid bleach industry on a successful commercial scale a plant for the manufacture of sodium hypochlorite solution is not essential. These companies procure concentrated sodium hypochlorite from chemical concerns which is delivered to their plants in tank cars and then produce their household liquid bleach by the simple process of diluting concentrated solution and bottling it for resale as household liquid bleach.

Record support: Brower, Tr. 2659-60; Buchman, Tr. 2786; Montgomery, Tr. 3934.
Mr. Stoneman defined a bleach manufacturer as one "who *bottled* liquid hypochloride [sic] under his own brand and sold it through grocery stores." (Tr. 5654)

40. Those companies which produce household liquid bleach by diluting concentrated sodium hypochlorite are in competition with those which produce such liquid bleach by introducing chlorine into a caustic soda solution.

Record support: Brower, Tr. 2689-90; Buchman, Tr. 2782.

D. RAW MATERIALS AND BOTTLES ARE READILY AVAILABLE, AND NO ADVANTAGES HAVE ACCRUED TO CLOROX IN PURCHASING THEM.

41. There is no shortage of materials required for the manufacture of liquid bleach. They are readily available in all parts of the country and are produced by many of the larger chemical companies, including Hooker Chemical, Dow Chemical, Stauffer Chemical, Frontier Chemical, Diamond Alkali, Wyandotte, Solvay, Olin-Mathieson, Columbia Southern, Westvaco and Pennsylvania Salt Company.

Record support: Montgomery, Tr. 3946-47; RX 53, 54 and 56.

42. There is no proof nor is there any claim that Clorox Chemical had or Clorox has any exclusive contracts with respect to raw materials from which household liquid bleach is made; or that Clorox has secured or can secure any price advantage in purchasing such raw materials by reason of the acquisition; or that Clorox will enjoy any advantage over competitors in purchasing raw materials or other supplies utilized in the manufacture of household liquid bleach.

43. Except for the new patented Purex bottle,[1] there is no proof that the bottles required for the bottling of liquid bleach are not readily available to any and all producers of household liquid bleach, and there is no proof that Clorox Chemical had or Clorox has any exclusive contracts for bottles.

Record support: [1] RX 114, pp. 7 and 14.

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44. There is no proof that by virtue of the acquisition Clorox, if it were to purchase, jointly with Procter, the bottles used in the bottling of its liquid bleach, could obtain any advantages over competitors that were not enjoyed by Clorox Chemical.

[Note: The only testimony concerning purchases of bottles was given by the witness Mendleson, who testified that the number of bottles purchased for Vano liquid bleach was very small, whereas the number of bottles bought for liquid starch was substantial; and that his company was able to get a low price by combining the purchases of the two types of bottles (Tr. 3159-60). This, however, in no way conflicts with the above proposed finding since there is no proof that Clorox Chemical prior to the acquisition was not receiving the maximum quantity discounts procurable or that combining such purchases with those made by Procter would increase such discounts in any respect.]

E. THERE IS NO PROOF THAT THE ACQUISITION WILL RESULT IN ANY ADVANTAGES IN PRODUCT OR PACKAGING RESEARCH.

45. Procter has certain product research facilities which, within the limitations of such facilities, could be utilized for research related to any of the products which it manufactures.[1] None of these facilities have been used by Clorox for liquid bleach research,[2] and there is no proof that any of such facilities are adaptable for product research in the liquid bleach field, or that, if adaptable, it would be advantageous or desirable to use them.

Record support: [1] Morgens, Tr. 644.
[2] Montgomery, Tr. 3979.

46. Independent agencies are available to and are used by bleach companies in product and packaging research and development. For example, Clorox had research done for it by Stanford Research Institute;[1] Purex utilized the services of Latchford Marble Glass Co., one of its glass suppliers, in working out a new bottle design;[2] Gardiner hired others to do its research or used the facilities of one of its chemical suppliers;[3] and Prescott hired an independent organization to design its new Dazzle bleach label.[4]

Record support: [1] Matson, Tr. 1157-58; Montgomery, Tr. 3978.
[2] Stoneman, Tr. 1903.
[3] Gardiner, Tr. 2878.
[4] Prescott, Tr. 2614-16.

47. There is no proof that the use by Clorox of any product or packaging research facilities within the Procter organization will result in any advantages, financial or otherwise, which were not available to Clorox Chemical within its own organization or from independent agencies.

F. THE MANUFACTURING MACHINERY AND EQUIPMENT USED BY PROCTER COULD NOT BE USED IN THE MANUFACTURE OF HOUSEHOLD LIQUID BLEACH AND THERE IS NO PROOF THAT ANY ADVANTAGES WOULD RESULT FROM ANY JOINT USE OF SUCH FACILITIES.

48. The machinery and equipment used in the manufacture of soaps and detergents is not interchangeable with the machinery and equipment used in the manufacture of liquid bleach, nor can it be used in such manufacture, because in the manufacture of bleach the tanks and parts of the filling lines must be protected with plastic or rubber.[1] There is conflicting testimony as to whether equipment used for the bottling of synthetic detergents could be used in the bottling of liquid bleach. Respondent's witness Montgomery testified that it could not be so used because of the types of material and construction necessary for and the difference in the types of filling.[2] Complainant's witness Stoneman testified that all elements in the *packaging* line for liquid detergents are usable for liquid bleach except the filler and it would require some corrosive-proof parts.[3] The complainant has not sustained its burden of proof as to any claim of interchangeability, but, in any event, it is not necessary to resolve this particular conflict in the testimony in view of the fact that there is no showing that the matter is of any significance in this proceeding.

[Note: The witness Stoneman testified that the equipment for "manufacturing and packaging" liquid detergents is similar to that used for liquid bleach. It is clear, however, from his testimony that he was referring only to the packaging or bottling equipment and not to any equipment used in manufacturing (Tr. 5628-30).

Record support: [1] Montgomery, Tr. 3957-58.
[2] Montgomery, Tr. 4004.
[3] Stoneman, Tr. 5628-30.

Moreover, when an unused portion of Procter's plant in Kansas City was utilized for the manufacture of Clorox, it was necessary to use the Clorox manufacturing equipment and machinery (Tr. 1069-1071).]

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49. There is no proof that any of Procter's plants is located at a point where Clorox could beneficially use any additional manufacturing facilities, even if Procter's facilities were interchangeable, for the manufacture or bottling of liquid bleach. Likewise there is no proof that Clorox needs or requires or could profitably use any additional manufacturing capacity in any area in which any Procter plant is located.

[Note: The change in plant location in Kansas City came about because there was a vacant building on the Procter manufacturing site and it was deemed desirable to utilize it. (Tr. 489-90; 1045-47). There was no proof that this change was made because of any inadequacy of the Clorox plant or that any substantial advantages or economies in manufacture resulted.]

50. In addition to the factors considered in the foregoing findings, there is no proof that Clorox Chemical (or Clorox) could use any additional financial resources in connection with or in the development of its manufacturing operations or facilities, or that the availability of any additional financial resources by reason of the acquisition would provide any advantages not theretofore possessed by Clorox Chemical.

G. THERE ARE MANY COMPANIES ENGAGED IN THE MANUFACTURE OF LIQUID BLEACH FOR SALE UNDER THEIR OWN BRANDS AND UNDER THE PRIVATE LABELS OF GROCERY CHAINS.

51. Evidence introduced by the parties as to the number and size of firms engaged in the manufacture of household

liquid bleach is inconclusive for the purpose of establishing the exact number and size of such firms. Evidence offered by the respondent showed that there were approximately 225 such firms.[1] Complainant introduced evidence showing that only 139 of these 225 firms were listed in Dun & Bradstreet.[2] Complainant, which has the burden of proof, failed to establish that the total number of firms in the industry was substantially different from that shown by respondent and in any event complainant recognizes that there were 139 such firms of sufficient financial stature to be listed in Dun & Bradstreet. In sum, the evidence requires the Finding that there are a large number of firms engaged in the manufacture and distribution of household liquid bleach of varying financial size and importance. The evidence shows that all of these competing firms, except Clorox, are engaged in the liquid bleach business only in particular regions of the country. Complainant has offered no proof as to the significance, size or importance, of the business done by most of these firms in the particular regions in which they do business.

[Note: Morgens testified that there were over 100 and maybe 200 bleach companies making household liquid bleach (Tr. 477). Stoneman said that there were 35 to 50 liquid bleach producers in the entire United States (Tr. 1543)].

Record support: [1] RX 112.

[2] CX 696 A-P. In introducing this exhibit, the Government witness said that he did not know the size of the companies not included in Dun & Bradstreet and that they could be smaller or larger than those included (Tr. 5943).

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52. In every region of the country in which testimony was taken in this proceeding, the evidence showed that there were several competitors of Clorox, at least one of

which was of substantial size and which had substantial sales of liquid bleach in such region, and in certain of such regions the sales of such competing firms exceeded those of Clorox.

Record support: CX 443; RX 114; CX 464; CX 472; CX 473; CX 483; CX 491; CX 496; CX 503; CX 504; CX 510; CX 519A. Also see Finding No. 33.

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53. In addition to the bleach companies specifically identified, there are a large but indeterminate number of small bleach manufacturing companies, many of whom sell their product from trucks door-to-door.[1] The sales of these door-to-door bleachers are significant in some parts of the country. For example, in Cleveland, Ohio, a survey shows that in 1958 they were selling *over 38%* of the household bleach sold in the Cleveland area.[2] Since the end use of the bleach sold by these door-to-door bleachers and that sold through retail stores is the same, namely, household bleaching and disinfecting, they are competitive with each other.

Record support: [1] Hahn, Tr. 2257; Brower, Tr. 2702; Gardiner, Tr. 2870; Bennett, Tr. 4481, 4534-35.
[2] RX 63 and 64.

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54. Complainant has offered no evidence as to the volume of household liquid bleach sold by these door-to-door bleachers in most of the various regions of the country. Such sales are not taken into account in the Nielsen Food Index[1] in the reporting of market shares.[2]

Record support: [1] Hereinafter referred to as "Nielsen."
[2] Nickelson, Tr. 4685.

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55. Household liquid bleach is also sold through laundromats and such sales are a new and expanding develop-

ment in the market.[1] Sales through laundromats are not taken into account by Nielsen.[2]

Record support: [1] Trimpe, Tr. 4428.
[2] Nickelson, Tr. 4685.

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56. In addition to liquid bleach sold under the brand names of the manufacturing bleach companies, there is a large volume of household liquid bleach sold under the private brand names of retail grocery organizations. One of these private brands is both manufactured and sold by a large retail organization (Safeway Stores) and the others are manufactured by bleach companies and sold to the grocery organizations for resale under the latter's private labels. RX 68 is a collection of two hundred of such private label bleaches which are currently being manufactured and sold. There is no proof that RX 68 includes all or substantially all such private labels.

[Note: The Hearing Examiner, we think, can take judicial notice of the fact that many of these retail grocery chains have greater resources than Procter.]

Record support: Stoneman, Tr. 1547; RX 68 and 69 A-Z.

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57. The volume of liquid bleach produced by established bleach manufacturers and sold under the private label of the country's largest grocery chain (A & P) is very substantial, is steadily increasing and approximates the sales of Clorox in the stores of such chain.

[Note: CX 684 shows that comparing the first six months of the years 1956, 1957 and 1958, there was a steady and substantial increase in the sales of A & P's private label bleach, Bright Sail. Likewise, a comparison of the sales of the last six months of

1956 with the last six months of 1957 shows a corresponding increase.]

Record support: RX 78; CX 684.

58. At least seven of the competing bleach producers called as witnesses for complainant produce private label bleach in addition to selling bleach under their own brand names.[1] Certain of the larger competitors of Clorox produce a large number of private labels, such as Purex—34 private labels, Prescott—41 private labels, Hood—7 private labels.[2] Another large competitor, Roman Cleanser, very recently began producing private label bleach.[3] For some of these competitors, the value of sales of private label bleach are a substantial part of their total sales of liquid bleach. For example, Linco Distributing Corporation,[4] Hood Chemical Co.[5] and J. L. Prescott Company.[6]

Record support:
[1] Stoneman, Tr. 1521-22; Smooke, Tr. 1755; M. Giachetti, Tr. 2117; CX 464; MacDonald, Tr. 2335, 2379; Henkel, Tr. 2552; CX 491; Riccardi, Tr. 3045. Also see Brower, Tr. 2724; Jones, Tr. 2972.
[2] CX 688 A-B.
[3] Riccardi, Tr. 3045.
[4] CX 464 (In camera).
[5] CX 472 (In camera).
[6] CX 491 (In camera).

59. Clorox Chemical did not and Clorox does not manufacture household liquid bleach for sale under any private label.

Record support: Brown, Tr. 1072-73; Trimpe, Tr. 4934.

60. All sales of private label liquid bleach (except Safeway) represent sales by manufacturing competitors of Clorox and have the same competitive effect as if the liquid bleach had been marketed under the brand name of the respective manufacturing bleachers.

61. Sales of private label bleach by liquid bleach producers competing with Clorox are not categorized separately and are not included in the figures which show Nielsen Food Index market shares for such producers' own brands, and to the extent of such sales, the Nielsen figures understate the sales and the total share of market of each such producer.

Record support: Nickelson, Tr. 4712-13.

62. Such evidence as there is on the subject shows that the manufacture and sales of private label bleaches have grown since 1955 and that a greater number of grocery chains now carry private brands than was the case in 1955.

[Note: The complainant has made no effort to present any evidence respecting the importance or significance of private label liquid bleach either by showing the volume of private label business done by competing bleach producers or volume and entry into the business at the grocery store level. In addition to certain statistics introduced by respondent respecting A & P and Colonial Stores, substantially all of the evidence on the subject was elicited from respondent's witnesses. The testimony relating to this subject was to the following effect:

Respondent's witness Trimpe testified that private labels are a "very significant development" (Tr. 4247); that private label bleaches have increased considerably since he came with Clorox Chemical in 1955 (Tr. 4276, 4396); and that the increase generally has been concentrated in certain areas but that there has also been an increase nationally (Tr. 1279). He also testified that the large Winn-Dixie chain had introduced a private label bleach in the Miami and Tampa markets in the early part of 1958 (Tr. 5556).

Bellingall testified that there had been a growth in private label activity after 1955 (Tr. 5267), and fur-

ther testified that there had been additional growth of private label bleaches throughout the country after the acquisition (Tr. 5074).

A bleach producer, called as a witness by complainant, testified that private label brands were his principal competition (Rinaldi, Tr. 2518).

Complainant's witness Stoneman testified that Purex manufactured a private label bleach for the 25 stores of the Von grocery chain in Los Angeles, which entered the market in 1958 (Tr. 5733). The Purex Annual Report for 1956 states that "The trend towards private label or controlled brands by large chains, particularly on items of large volume and fast turnover, continues to rise." (CX 439, p. 12.)

Bissmeyer of Colonial Stores testified that in 1956 the Colonial chain sold 65,784 quarts of its private label bleach; 76,392 quarts in 1957 and 179,748 quarts in 1958 up to the time of his testimony (Tr. 4839).

Respondent's witness Bennett stated that the private label bleach "Speed-Up" came into the Buffalo market in early 1958 (Tr. 4484). In this apparently Mr. Bennett was mistaken as to the year since it appears that this private label had been introduced in 1954 and 1955 and continued into 1958.

The testimony concerning this growth of private label bleach was virtually uncontradicted.

Complainant introduced as CX 645 a summary of responses received by Clorox from its distributors concerning the number and sales trend of private label bleaches in the territory of each distributor. As indicated on the exhibit, some distributors reported that particular private label bleaches were having no real competitive effect but that in other instances they were growing and represented a substantial part of the market. There is nothing in Exhibit 645 which contradicts the testimony of respondent's witnesses. Respondent made no claim that in every section of the country or with respect to every private label bleach there had been an increase in competition. As was

stated by Trimpe, the increase in the number of private label bleaches generally has been concentrated in certain areas; however, they have also increased nationally (Tr. 1279). Respondent's sole claim was that private label bleach in certain chains and in certain sections of the country was expanding and constituted a highly competitive factor in such markets.]

63. The growth of private label liquid bleaches is attributable, in part at least, to the fact that generally such bleaches can and do undersell such brands as Clorox and Purex and other "quality" bleaches;[1] that the grocery chains having such private label liquid bleaches can and do favor their own brands with special preference as to shelf location and quantity of shelf space, and give them favorable promotional backing in their store.[2]

The competition of private label bleaches is a growing competitive factor in the liquid bleach market, and constitutes an expanding sector of competition for Clorox and all other producer brands.[3]

Record support: [1] Stoneman, Tr. 1545-46; M. Giachetti, Tr. 2120-21; Kunin, Tr. 2412; Bissmeyer, Tr. 4847.
[2] Bellingall, Tr. 5191; Trimpe, Tr. 5556-59.
[3] See Finding No. 62.

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1. *The manufacturing facilities and sales areas of certain competing firms have been expanded subsequent (as well as shortly prior) to the acquisition and there is no proof that the acquisition may deter further expansion.*

64. There is no proof that the total number of manufacturers and producers of household liquid bleach has decreased since 1955, or since the acquisition, nor is there any proof that, aside from certain shifts in ownership (hereinafter specified), any company of appreciable size has withdrawn from the manufacture of household liquid bleach since the acquisition.

[Note: Complainant's witness Mendleson testified that B. T. Babbitt, Inc. acquired Chemicals, Inc. in August of 1956; that this latter company manufactured a number of products, including a liquid bleach "Vano" (Tr. 3185), which, as shown by CX 530, had been steadily declining in sales which were relatively insubstantial. The witness further testified that his company had decided in August, 1956, a year prior to the acquisition, not to promote or advertise the liquid bleach "Vano" (Tr. 3185). Indeed, an indication of the insubstantial nature of the Vano bleach business is the fact that in the annual Babbitt report for 1956 no mention was made of the fact that a liquid bleach had been acquired, although the other products acquired in the purchase of Chemicals, Inc., were fully discussed. The witness further testified that in accordance with a decision which his company had made in 1953, at a time when Babbitt was not engaged in the bleach business, not to compete with the soap companies, his company discontinued the manufacture of liquid bleach in the first part of 1958.

While, of course, complainant will undoubtedly argue that this is an instance of a withdrawal resulting from the acquisition, we submit that it can not fairly be cited as such. As all of the testimony and the Examiner's probing questions reveal, the Babbitt Company had determined a year prior to the acquisition not to promote or actively to compete in the sale of this particular brand of bleach. Furthermore, it shows that the decision to discontinue the manufacture of this liquid bleach was a part of a policy determined upon in 1953 and which came into automatic operation with the acquisition (Tr. 3185-92).]

65. Shortly before and since the acquisition certain companies in the liquid bleach business have expanded their operations by building new plants or acquiring new plant sites, to wit:

The John Puhl Products Company, manufacturer of Fleecy-White bleach, constructed a new plant in Alliance, Ohio.[1]

The Purex Company has acquired a plant at Bristol, Pennsylvania, at which it intends to manufacture liquid bleach.[2]

Roman Cleanser has acquired 16 acres of land for use in the manufacture of liquid bleach at Lawrenceburg, Indiana, near Cincinnati.[3] Roman Cleanser, in March or April, 1958, acquired a plant for the manufacture of liquid bleach in Miami, Florida.[4]

[Note: Respondent proffered evidence to the effect that if permitted to answer the pertinent questions the witness Trimpe would testify that the Hilex Company had recently constructed a new plant in Milwaukee, Wisconsin (Tr. 4302-11).]

Record support: [1] Trimpe, Tr. 4297.
[2] RX 114, p. 21 (Compare with CX 438, p. 22); Stoneman, Tr. 5734.
[3] Riccardi, Tr. 3063.
[4] Riccardi, Tr. 3062-63.

66. Shortly prior, as well as subsequent, to the acquisition certain companies in the liquid bleach business acquired plants from other existing manufacturers and thus expanded their sales area and business, as follows:

In October, 1958, the Purex Company acquired all of the plants and business of the John Puhl Products Company, a subsidiary of Sterling Drug Company and the manufacturer of Fleecy-White Bleach, and Purex thereby increased its sales area and volume of business.[1]

Prior to this acquisition by Purex the Hilex Company had sold its plant in Dallas, Texas, to the Sterling Drug Company (John Puhl Products Company).[2]

Record support: [1] Stoneman, Tr. 5630-35, 5712-13; CX 561.
[2] Stoneman, Tr. 1544.

The Barton Chemical Company sold a plant in Grissith [sic], Georgia, adjacent to Atlanta, to the company manufacturing Roman Cleanser, and the sales area and volume of business of that company was thus expanded.[3]

Record support: [3] Stoneman, Tr. 1544.

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67. Since the acquisition certain companies engaged in the manufacture and sale of household liquid bleach have expanded their sales areas and have entered into competition with Clorox in such areas, as follows:

Fleecy-White bleach (John Puhl Products) expanded into central and eastern Ohio, and is expanding throughout the state very rapidly.[1] Also this brand entered Arkansas and Louisiana and is spreading rapidly.[2] Also this brand is now being distributed in Virginia.[3]

The Texize Company entered the central section of Tennessee during the year 1958.[4]

The Sani-Clor Company has entered Nevada.[5]

By its acquisition of Fleecy-White (heretofore referred to) in October, 1958 Purex increased its sales area geographically so as to cover 64% of the total population of the United States.[6]

Purex expanded its sales into Erie, Pennsylvania.[7]

[Note: Respecting the expansion of sales territories, complainant's witness Gardiner testified that at some time subsequent to 1952 he tried to expand into Syracuse but pulled out because of losses. These losses

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Record support: [1] Trimpe, Tr. 4380-81.
[2] Trimpe, Tr. 4381.
[3] Trimpe, Tr. 4380, 4913-14, 5431-32.
[4] Trimpe, Tr. 4381.
[5] Trimpe, Tr. 4382.
[6] Stoneman, Tr. 5630, 5635, 5712-13.
[7] Stoneman, Tr. 1575; CX 450.

he attributed to the fact that his Syracuse broker was not very good and also that trucking and warehousing made it too expensive to break into an established territory (Tr. 2878). This testimony, we submit, simply reflects the acknowledged facts that effective salesmanship is important and that transportation costs have a significant effect upon the radius within which household liquid bleach can be distributed from a particular plant. In any event, it in no wise indicates that this experience of Mr. Gardiner was the result of any anti-competitive activities of Clorox Chemical or Clorox, before or after the acquisition.]

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68. There is no claim or proof that any of the acquisitions or expansions referred to in preceding Findings 65, 66 and 67 were in any way caused by the acquisition or resulted in any way from the acquisition or that they would not have occurred had there been no acquisition. Nor is there any proof that any shifting of ownership or disposition of facilities by any company was occasioned by, or resulted because of, the acquisition. Rather, the acquisitions and expansions referred to in such preceding Findings reflect the confidence of competitors as to their future in the household liquid bleach business and disprove any fears that their ability to compete has been adversely affected by the acquisition.

69. There is no proof that any bleach company producing household liquid bleach has been prevented from expanding its plants or its sales area by any activities or exclusionary practices of Clorox Chemical or Clorox.

70. There is no proof that any company producing household liquid bleach has been prevented or deterred from expanding its plants and sales area by the acquisition of Clorox Chemical by Procter.

V. The Acquisition Has Not Had and There Is No Proof That It Probably Will Have Any Effect Upon the Distribution of Liquid Bleach

A. There Is No Proof That the Acquisition Could or Might Probably Result in Any Advantages in the Distribution of Clorox Liquid Bleach or That Any Change in the Method of Distribution Is Probable.

71. Most household liquid bleach is sold to the consumer through grocery stores.

[Note: As indicated in preceding Findings 53 and 55, a certain amount of household liquid bleach is sold through door-to-door distributors and laundromats. It is also sold in department stores and to some extent in drug stores and variety stores, although such sales are not in great quantity. (Morgens, Tr. 426-A) In this Section we treat with the evidence relating to distribution by the producer to the grocery outlets.]

Record support: Stoneman, Tr. 1547; S. Giachetti, Tr. 2074-75; Kunin, Tr. 2371; Olkin, Tr. 2461; Prescott, Tr. 2583; Brower, Tr. 2698; Buchman, Tr. 2791; Gardiner, Tr. 2857-58; Riccardi, Tr. 3046.

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72. Certain producers of household liquid bleach, including Clorox, distribute the liquid bleach produced by them to wholesale and retail outlets through distributors or brokers.[1] Others sell directly to retailers and wholesalers through their own direct salesmen.[2] Other manufacturers utilize a combination of these methods of distribution.[3]

Record support: [1] Gardiner, Tr. 2859, 2894; (Fleecy-White) Leazar, Tr. 4110; Stoneman, Tr. 5638; RX 77B.

[2] Stoneman, Tr. 1547; S. Giachetti, Tr. 2069; Rinaldi, Tr. 2513; Brower, Tr. 2683, 2703; Buchman, Tr. 2777-78.

[3] Stoneman, Tr. 1561-63, 5734-35; Smooke, Tr. 1756; Kunin, Tr. 2348; Olkin, Tr. 2462; Prescott, Tr. 2567-68; Riccardi, Tr. 3095.

Proposed Findings of Fact

73. Clorox has always been distributed through distributors or brokers.[1] This method of distribution was successful and had proved effective for the Clorox brand.[2]

[Note: Complainant brought out through its witness Chaddock that there was no change at all in the relationship between the distributor and Clorox following the acquisition (Tr. 1218).]

Record support: [1] Morgens, Tr. 501-2.
[2] Morgens, Tr. 888; Trimpe, Tr. 4363-65.

74. The evidence is conflicting as to which method of distribution is the more economical and the more effective. Such conflict need not be resolved since the issue is collateral and immaterial.

[Note: There was testimony that the Purex Company had changed its method of distribution from brokers to direct salesmen in or about 1956 and that this was advantageous in reducing sales costs and in giving more control over the sales effort (Tr. 1561-65). When, however, Mr. Stoneman testified in January, 1959 he indicated that at least in one instance (i.e., Portland, Oregon) Purex had reverted to using a broker (Tr. 5734).

When respondent offered evidence to establish that there was no showing that Purex's change to direct selling had resulted in any improvement in its market share the Hearing Examiner expressly ruled that he would make no finding as to which method of distribution was the better, based on the Purex experience, holding that this matter was not an issue in the case but was a "collateral by-pass" (Tr. 4729-31).

In view of this ruling, we are submitting no further findings as to this point. We do point, however, to the testimony in the record that in the distribution of household liquid bleach, brokers or distributors are preferable because, among other things, they have

a continuing standing and prestige in their respective territories (Tr. 4363-65), and perform services in the store area which are not usually performed by direct salesmen (Tr. 4356-57; see also Tr. 4447). In so far as grocery stores, as purchasers of liquid bleach, are concerned, it makes no difference whether the merchandise is sold by distributors or by direct salesmen (Tr. 4031).]

75. There is no evidence that a change from distributors to direct salesmen in the distribution of Clorox would be beneficial or more effective or result in any economies. Procter has no plan or intention to change the successful Clorox distributor organization [1] and there is no evidence indicating that any change from distributors to direct salesmen is probable or would be advantageous to Procter or Clorox in any way.

[Note: Mr. Morgens, the President of Procter, last testified in January, 1959, seventeen months after the acquisition. At that time he had had an additional eleven months, since the time of his testimony in February, 1958, to observe and evaluate the effectiveness of Clorox's distribution through brokers. In his last testimony, he stated that at that time Procter was more than ever sold on the Clorox distributing system because of its effectiveness; and that Procter had no plans and knew of no reason why it would be changed in the foreseeable future (Tr. 5516-18). This testimony was subsequently stricken on motion of complainant. We submit that if the complainant proposes to make any point that a change in the distribution method is significant or is likely to happen, then Mr. Morgens' testimony was clearly competent to refute any such claim and should be considered by the Examiner. Indeed, we know of no more effective

Record support: [1] Morgens, Tr. 888.

refutation than that offered by the President of Procter as to his satisfaction with the present distribution system, his intention to retain the same, and his lack of any reason for changing it.]

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76. There is no proof that a conversion by Clorox to direct selling, either through its own salesmen or through Procter salesmen, would have any adverse effect on competition in the household liquid bleach industry, or would result in any lessening of competition.

B. THE ACQUISITION WILL HAVE NO EFFECT UPON TRANSPORTATION COSTS.

77. In the distribution of household liquid bleach freight costs are a substantial proportion of the total cost of the product.[1] Such costs limit the radius of the area which can be economically served by any particular plant manufacturing household liquid bleach. The testimony of all witnesses on the subject was that such economic radius was no more than 400 miles from the plant.[2] Several stated that it would be 300 miles.[3] Others testified that it was between 200 and 250 miles.[4] Two witnesses stated that it was 150 miles.[5]

Record support:
[1] Morgens, Tr. 496; Stoneman, Tr. 1572; CX 437.
[2] Prescott, Tr. 2578
[3] Stoneman, Tr. 1523; Jones, Tr. 2927-28.
[4] M. Giachetti, Tr. 2147; Kuhn, Tr. 2349; Mendleson, Tr. 3150.
[5] Gardiner, Tr. 2858; Riccardi, Tr. 3020.

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78. Large freight costs are an advantage to the local and regional bleach producer since they protect and shelter such producer within his limited area of operation from competition from plants located in other areas.

Record support: Brower, Tr. 2712.

79. There is no proof that any freight savings have been or can be secured by Clorox by reason of the acquisition, either through any combination of shipments with Procter products or otherwise. The evidence shows that the per case freight cost of Clorox in the seven month period following the acquisition was higher than in the twelve month period ending June 30, 1957.[1]

[Note: The witness Stoneman testified that the shipment of a number of products from a common source of manufacture results in lower transportation costs (Tr. 1875-9). This has no application to the freight costs of Clorox since it manufactures no product other than Clorox in any of its plants and (with the exception of shipments from the Kansas City plant) could not combine any of its shipments with Procter products. As to the Kansas City plant there is no evidence and no basis for any claim that any combined shipments would be made or that, if made, any substantial freight savings would result therefrom.

Furthermore, on the whole record there is no proof that Clorox Chemical, prior to the acquisition was not securing the lowest possible freight or trucking rates.]

Record support: [1] CX 437.

VI. The Acquisition Has Not Had and There Is No Proof That It Probably Will Have Any Effect Upon the Marketing of Clorox Liquid Bleach

A. There Is No Proof Nor Is There Any Claim That Prices or Pricing Policies Will Be Affected by the Acquisition.

80. Historically Clorox bleach has been sold to Clorox distributors throughout the United States at uniform[1]

Record support: [1] Brown, Tr. 1050-51.

prices which have been as high or slightly higher than most other competing brands.

[Note: The Clorox uniform national price affords and has afforded certain competitive advantages to regional and local bleach producers who have more flexibility in adjusting their prices to the particular demands of their competitive area.]

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81. Before the acquisition, Clorox's public acceptance, and the premium price thereby obtainable, had been due in part, to the following factors:

(1) Independent laboratory tests of Clorox, as compared with other bleaches, demonstrated the superiority of Clorox.[1]
(2) Clorox's claim of antiseptic property higher than any other bleach had been advertised for a number of years and there is no proof that such claim was ever successfully questioned or contradicted.[2]
(3) Clorox Chemical at all times maintained a high degree of care in the manufacture, control and inspection of its product in order to make certain that the product was uniform.[3]

The public acceptance of Clorox bleach has continued after the acquisition, but there is no proof that the acquisition increased such acceptance. Nor is there proof that any of the foregoing contributing factors has been or probably will be affected by the acquisition.

[Note: The testimony in support of the foregoing finding was uncontradicted. However, a number of competing bleach manufacturers testified to the effect that they knew of no chemical or functional differences between Clorox and other competing bleaches

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Record support: [1] Matson, Tr. 1157-58.
[2] Montgomery, Tr. 3938-40.
[3] Montgomery, Tr. 3985-86, 3992, 4007.

(Tr. 2143, 2262-63, 2517, 2689, 2873). None of these witnesses were, however, chemists and the Hearing Examiner commented that it would be necessary for a chemist to prove whether or not all liquid bleaches were chemically the same (Tr. 2364).]

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82. There is no proof that any superior qualities possessed by Clorox over competing liquid bleaches could not be duplicated by others, assuming equal care and effort.

83. Certain other bleach manufacturers who distribute high quality liquid bleaches sell at substantially the same premium price as Clorox. Among such manufacturers are Purex,[1] Linco,[2] Prescott,[3] 101,[4] Roman Cleanser,[5] and Hilex.[6]

Liquid bleaches manufactured by certain other regional manufacturers sell at a price slightly less than Clorox.[7]

Private label bleaches customarily sell for less than Clorox or other premium quality bleaches.[8]

In addition to the foregoing general pricing situation, there is evidence that in particular regional situations certain competitive bleaches have been sold at a higher price than Clorox.[9]

[Note: Bellingall stated that Clorox is a quality product with prestige and earns a premium price (Tr. 5302).]

Record support:

[1] Stoneman, Tr. 1545-46.
[2] Compare CX 465 and CX 399A.
[3] Compare CX 492 and CX 399A.
[4] Gardiner, Tr. 2867-68.
[5] Riccardi, Tr. 3051.
[6] RX 85, Table 11, page 18 (designated by respondent in document handed to complainant on January 27, 1959, Tr. 5626).
[7] Smooke, Tr. 1761; compare CX 477, CX 486, CX 502, CX 508, CX 515 and CX 531 with CX 399A; Rinaldi, Tr. 2515.
[8] Stoneman, Tr. 1545-46; M. Giachetti, Tr. 2120-21, Kunin, Tr. 2412.
[9] Gardiner, Tr. 2867-68; Riccardi, Tr. 3051; Bellingall, Tr. 4376, 5302-3; RX 85, Table 11, page 18.

Proposed Findings of Fact

84. In November 1957, following the acquisition, Clorox raised its prices on the half gallon and gallon sizes because of increased costs.[1] Both Clorox Chemical and Clorox in setting the prices for their product have taken into account increases in the cost of manufacture and distribution, as well as competitive prices.[2]

Competing bleach manufacturers have likewise taken increased costs and competitive prices into account in increasing prices.[3]

Since any increased costs are general in the industry the price increases of competing bleaches have generally paralleled Clorox's increase in price.

Record support: [1] Trimpe, Tr. 1317; CX 399 A-B.
[2] Trimpe, Tr. 1317.
[3] M. Giachetti, Tr. 2148-49; Hahn, Tr. 2270.

85. While certain of complainant's witnesses testified that their prices tended to follow Clorox, there is no evidence that Clorox could establish or maintain any premium price not related to costs and not in line with competitive prices.

86. Following the November, 1957 price increase, the retail price of Clorox went up in some sections of the country and did not in others, depending upon the local competitive situation.[1]

[Note: Although Clorox suggests a selling price to its distributors, the distributor is in no way bound and there is no agreement that he must sell at any particular price (Morgens, Tr. 887).]

Record support: [1] Trimpe, Tr. 1319.

87. Such evidence as there is on the subject shows that Clorox could not maintain a price increase, even though

directly related to costs, which resulted in a substantial differential between the price of Clorox and the price of competing bleaches. When Clorox raised its price in Atlanta and in Buffalo to reflect the higher cost of a new bottle, the adverse effect on sales caused it to lower its price to the prior level.[1]

[Note: The testimony relating to the loss of sales and the discontinuance of the price increase of ten cents per case in Atlanta is pointedly supported by RX 129, being a contemporaneous memorandum, dated June 20, 1958, from Mr. Trimpe to Mr. Brown. The memorandum sets forth the figures showing the loss in sales following the introduction of the new bottle with a handle at the higher price. It reflects a loss of sales in each of the months in question compared with the same period of the preceding year.

In addition, the memorandum refers to the fact that a further consideration for discontinuing the quart bottle at the premium price is that a "grave distribution problem" was faced in the area due to the "dual price arrangements" on quarts.]

Record support: [1] Morgens, Tr. 3313; Trimpe, Tr. 4373-74; RX 129 A-B.

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88. There is no proof that Clorox Chemical or Clorox has ever initiated or engaged in any predatory pricing practices or policies. There is no proof that the acquisition of Clorox Chemical by Procter will have any effect on pricing practices or policies in the bleach industry nor is there any proof from which it can be inferred that there is any reasonable probability that such a result would occur.

[Note: We think it self evident that the foregoing is required by all of the evidence. Certainly there is

nothing in the past history of Clorox Chemical or Procter proving or tending to establish any disposition or proclivity to engage in any program of "price cutting" for the purpose of eliminating a competitor. Such coupons or price-off labels as have been temporarily used in local markets have been for defensive purposes to meet increased competitive activities, and have been used by other bleach manufacturers both before and after the acquisition. Indeed Clorox's whole history demonstrates that its success has been achieved by the constant maintenance of a relatively high price level for its product. There is nothing remotely suggesting that under Procter's ownership the situation will be changed in any respect. (Tr. 5092-95).]

89. Neither Clorox Chemical nor Clorox nor Procter has fixed or controlled or sought to fix or control the resale price of Clorox bleach charged to consumers by grocery or other retail outlets,[1] nor is there any proof that there is any reasonable probability that Clorox or Procter could fix or control such resale prices or would attempt to do so.

Record support: [1] Morgens, Tr. 887.

B. THERE IS NO PROOF THAT ANY CHANGES IN THE MANAGEMENT OF CLOROX WILL PROBABLY RESULT IN ANY ADVANTAGES IN THE MARKETING OF CLOROX LIQUID BLEACH OR ANY LESSENING OF COMPETITION.

90. As a result of the acquisition, none of the operating personnel of Clorox Chemical has been changed. At or about the time of the acquisition, however, several of Clorox Chemical's key personnel retired because of age or health.

For example, William J. Roth, former President, retired because of illness and age, although he still acts in a con-

sulting capacity;[1] W. L. Wolford, former Executive Vice President, had reached retirement age and retired at or about the time of the acquisition;[2] Larry Barton, Vice President of Technical Research, reached retirement age and retired in 1956.[3]

Record support: [1] Morgens, Tr. 840A; Brown, Tr. 1044.
[2] Brown, Tr. 1044.
[3] Trimpe, Tr. 4226.

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91. Since the acquisition, these retired personnel have been replaced and additional personnel have been added, some in the sales organization in accordance with a program begun by Mr. Trimpe in 1955.[1] For example, at the time of the acquisition, Fred Brown, former Procter manager of technical staff divisions, became Executive Vice President of Clorox;[2] Richard Oster came from Procter as a marketing staff associate; Rex Fink came as a manufacturing staff associate, and Richard Melrose as a laboratory technician.[3] Subsequently, W. B. Young, transferred to Clorox from Procter,[4] and Edward Melnick, formerly employed by Quaker Oats, became new Division Sales Managers.[5]

Record support: [1] Trimpe, Tr. 1277.
[2] Brown, Tr. 1029-30.
[3] Brown, Tr. 1036-37.
[4] Brown, Tr. 1037; Trimpe, Tr. 1275-76.
[5] Trimpe, Tr. 1277.

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92. The business of Clorox is conducted under the direction of Fred Brown though the officers of Clorox who fulfill the same functions as they did under Clorox Chemical management. Mr. Brown reports directly to Howard Morgens.

Record support: Morgens, Tr. 840A-B; Brown, Tr. 1029.

93. There is no proof nor is there any claim that the Procter personnel transferred to Clorox have any superior or potentially superior ability over the retired Clorox Chemical personnel. Nor is there any proof that Procter or any other company has any monopoly on competent and experienced personnel or that equally competent and experienced personnel are not available to other competing bleach companies.

94. The success of Clorox prior to the acquisition, as alleged in the complaint and as evidenced by the record, shows the competence and ability of the Clorox Chemical management prior to the acquisition.[1] There is no proof that the acquisition will result in any substantial change.

[Note: Mr. Morgens' testimony, which was subsequently stricken, stated that there "is no way that I can see that anyone can conclude that Procter & Gamble could have done better with the Clorox brand than the old Clorox management did." (Tr. 5513). He further stated that in looking at the growth record and other indicia of success, one must conclude that Clorox was a remarkably successful business and that you cannot get that success without very competent management. (Tr. 5513). We submit that this testimony was competent. We also point out that our references to the stricken testimony of Mr. Morgens is in line with the special ruling of the Hearing Examiner (Tr. 5614) that such testimony and certain other testimony of Mr. Bellingall could properly be referred to in the submission of these Proposed Findings.]

Record support: [1] Complaint and Answer, Par. 8.

C. THERE IS NO PROOF THAT THE ACQUISITION WILL PROBABLY RESULT IN ANY ADVANTAGES IN MARKET RESEARCH OR IN THE OBTAINING OF MARKET INFORMATION.

95. Clorox distributors, both before and after the acquisition, rendered periodic reports, giving full and complete information regarding market conditions, sales trends and competitive activity within their territories. These reports were used by Clorox Chemical and continue to be used by Clorox in the formulation of sales policies and decisions.[1]

Such reports, both before and after the acquisition were made in the same manner, with the same regularity and through the same channels, although the form of the reports differed slightly after the acquisition.[2]

Record support: [1] Trimpe, Tr. 4352-54, Tr. 4366; RX 76 A-D.
[2] Trimpe, Tr. 4207, Tr. 4349, Tr. 4354; RX 76 A-D; Bennett, Tr. 4447.

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96. In addition to market information received from its distributors, Clorox Chemical and Clorox had and has available information from their advertising agency as to merchandising activity at the store level and advertising and promotional activity in the field.[1]

Furthermore, Clorox Chemical and Clorox also had and has secured the Nielsen Food Index, showing market shares of household liquid bleach sold through grocery stores. Such Nielsen information as was and is received by Clorox Chemical and Clorox was and is available to anyone who subscribes therefor.[2]

Record support: [1] Bellingall, Tr. 5013.
[2] Morgens, Tr. 763; Trimpe, Tr. 1332; Stoneman, Tr. 1797; CX 27; CX 325, CX 334, CX 335, RX 85.

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97. Surveys conducted by newspapers are available in many areas of the country which show market shares of brands in the particular areas served by such newspapers. These surveys provide the regional or local bleach producer with data as to market share, are inexpensive and

are more directly pertinent to regional or local competitive conditions than national surveys, such as Nielsen Food Index.

Record support: Trimpe, Tr. 1314-16; Smooke, Tr. 1765-66; Hahn, Tr. 2185; Olkin, Tr. 2484-86; Tr. 2491-94; Brower, Tr. 2705-6; Riccardi, Tr. 3045; Royer, Tr. 4114-15; RX 63, RX 64, RX 65.

98. There is no proof that as a result of the acquisition, Clorox has secured any advantages in obtaining market information or intelligence which were not possessed by Clorox Chemical.

99. In addition to providing information regarding marketing conditions in the field, the Clorox advertising agency had and has available, for use by its clients if desirable, market research facilities for determining consumer preferences and reactions.[1]

Record support: [1] Bellingall, Tr. 5013.

100. Market research facilities are available to anyone who desires or has some use for such services through independent market research organizations.[1]

Record support: [1] Morgens, Tr. 696-7; Stoneman, Tr. 1545, 1644-46.

101. Procter maintains a separate market research department within its organization for certain types of market research surveys. Procter finds it advisable, as well, to utilize independent agencies.[1]

Record support: [1] Morgens, Tr. 693, 696-7, 775.

102. There is no proof that market research, as distinguished from market information, is necessary or desirable for Clorox or any other company in the liquid bleach industry, and there is no proof that, even if market research

information were necessary or desirable, that any advantages, financial or otherwise, would accrue to Clorox as a result of any use which might be made of Procter's market research department.

D. THE ACQUISITION HAS NOT HAD AND THERE IS NO PROOF THAT IT PROBABLY WILL HAVE THE EFFECT OF LESSENING COMPETITION OR TENDING TO MONOPOLY BY REASON OF ANY ADVANTAGES RESULTING THEREFROM IN THE ADVERTISING OR PROMOTION OF CLOROX LIQUID BLEACH.

1. *All forms of consumer goods advertising and promotion are and have been known and used in the liquid bleach industry.*

103. There are many ways and methods to advertise and promote in the household liquid bleach industry as in other consumer foods industries. Such varied methods, including among others the following, have been used in the liquid bleach industry.

TV Spots,[1] Network or Local TV programs,[2] Radio Spots,[3] Radio Programs,[4] Magazines,[5] Newspapers,[6] Trade

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Record support: [1] Smooke, Tr. 1767; Stoneman, Tr. 1776, CX 455; S. Giachetti, Tr. 2077, 2079-80; Olkin, Tr. 2448; Prescott, Tr. 2568; Gardiner, Tr. 2862; Riccardi, Tr. 3022; Clorox, CX 407.

[2] Stoneman, Tr. 1776; M. Giachetti, Tr. 2237; Jones, Tr. 2988.

[3] Smooke, Tr. 1767; Stoneman, Tr. 1776; S. Giachetti, Tr. 2077; Hahn, Tr. 2169; Kunin, Tr. 2352; Olkin, Tr. 2448, 2466; Prescott, Tr. 2568; Gardiner, Tr. 2859-60, 2862, 2876-77; Riccardi, Tr. 3022; Clorox, CX 406.

[4] Smooke, Tr. 1767; Prescott, Tr. 2610-11; Buchman, Tr. 2939-40; Jones, Tr. 2988.

[5] Stoneman, Tr. 1776; CX 455; Kunin, Tr. 2352; Clorox, CX 404 and 405.

[6] Stoneman, Tr. 1776; Hahn, Tr. 2169; M. Giachetti, Tr. 2236; Olkin, Tr. 2448; Prescott, Tr. 2568; Buchman, Tr. 2780; Gardiner, Tr. 2859, 2862; Jones, Tr. 2918; Riccardi, Tr. 3021-22; Bellingall, Tr. 5121.

Papers,[7] Bus signs, road signs and billboards,[8] Couponing,[9] Limited Sampling,[10] Premiums,[11] Spring and Fall House-cleaning Promotions,[12] Reduced Price Labels,[13] Contests,[14] Banners,[15] In-Store Broadcasting,[16] In-Store Promotions,[17] Two for the Price of One,[18] Free Goods to Dealers,[19] Premiums or Prizes to Dealers,[20] Count and Recount,[21] Reduced Prices to Dealers,[22] Cooperative Advertising.[23]

In addition, many of the bleach producers offer special services to the retailers.[24]

[Note: Although the evidence shows that the methods of advertising and promotion of household liquid

Record support:

[7] Olkin, Tr. 2448; Gardiner, Tr. 2898-2900.
[8] Riccardi, Tr. 3021, 3048, 3076-77.
[9] Stoneman, Tr. 1579, 1581-82; CX 455; Hahn, Tr. 2170; Gardiner, Tr. 2863; Jones, Tr. 2976-78, 2988-89, 2992; Riccardi, Tr. 3023.
[10] Shaver, Tr. 1417-18; Stoneman, Tr. 1904.
[11] Trimpe, Tr. 1327-28; Stoneman, Tr. 1586-87; M. Giachetti, Tr. 2136; Hahn, Tr. 2170; Prescott, Tr. 2624-25; Jones, Tr. 2979, 2993; Riccardi, Tr. 3031; Mendelson, Tr. 3168.
[12] Hahn, Tr. 2170; Riccardi, Tr. 3050; Bellingall, Tr. 5034-36.
[13] Shaver, Tr. 1414; Stoneman, Tr. 1527; M. Giachetti, Tr. 2149-50; Kunin, Tr. 2354-55; Olkin, Tr. 2449; Riccardi, Tr. 3030.
[14] Stoneman, Tr. 1692.
[15] Buchman, Tr. 2795-96; Gardiner, Tr. 2877; Jones, Tr. 2983; Riccardi, Tr. 3048-49.
[16] Buchman, Tr. 2814-19; Gardiner, Tr. 2860-61; Jones, Tr. 2959-61.
[17] Trimpe, Tr. 1301-2; Purex, CX 455; Kunin, Tr. 2360-61; Prescott, Tr. 2572-4; Brower, Tr. 2686-7.
[18] Clorox, CX 418.
[19] Smooke, Tr. 1762; Hahn, Tr. 2259, 2262; Kunin, Tr. 2353; Rinaldi, Tr. 2513; Prescott, Tr. 2624; Brower, Tr. 2684; Buchman, Tr. 2781; Gardiner, 2863, 2895-96; Jones, Tr. 2981-82; Riccardi, Tr. 3024, 3078-80.
[20] Stoneman, Tr. 1569-71; S. Giachetti, Tr. 2081; Olkin, Tr. 2483-84; Riccardi, Tr. 3086.
[21] Prescott, Tr. 2569-71; Gardiner, Tr. 2877-78.
[22] Riccardi, Tr. 3028-29; Mendleson, Tr. 3168.
[23] Morgens, Tr. 679; Stoneman, Tr. 1577; S. Giachetti, Tr. 2086-87; MacDonald, Tr. 2396-2400; Buchman, Tr. 2779-80; Riccardi, Tr. 3022-23; Mendleson, Tr. 3168.
[24] S. Giachetti, Tr. 2081; Brower, Tr. 2690; Buchman, Tr. 2790.

bleach may differ from those appropriate to other consumer household products (See Finding 111), yet as to all such products, changes in method will always be made when changed conditions so require. This is evident from the many varied advertising and promotional methods which have been used by bleach producers and is specifically demonstrated by the activities of Purex, in the new promotions of its patented bottle and the advertising in connection therewith (CX 455).]

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104. With respect to these differing methods, there is no unanimity of opinion, even among the complainant's witnesses, as to which is the most effective.

[Note: Smooke of Lady's Choice Foods testified that within his company there had been argument for years as to whether the radio or TV is the most effective media. (Tr. 1767).

Testimony from the Linco Company witness was to the effect that TV was most effective. (Tr. 2078) Kunin of the Hood Chemical Co. said that there was no answer to the question as to which is the most effective way to sell liquid bleach. (Tr. 2351-52.)

Buchman of the Savol Chemical Co. testified that cooperative advertising was the most effective way to sell household liquid bleach. (Tr. 2781)

Olkin of Rose-Lux Chemical Co. said that it was hard to see which was the most effective type of advertising. He thought that TV was if he could afford to pay for prime time. (Tr. 2448-49)

Stoneman of Purex testified that the television programs used to advertise Purex liquid bleach had run their course and that other forms of advertising had been substituted for them (Tr. 1902-3).]

105. It is necessary that the use of particular ways and methods of advertising and promotion be varied from

time to time, since a single form of advertising or promotion becomes stale and loses its appeal to the consumer.

[Note: Trimpe stated that techniques must be changed to meet the circumstances of the times. Both Clorox Chemical and new Clorox have been changing their techniques. (Tr. 1367-69)

Kunin of Hood testified that his company tests television at one time, newspapers at another and radio at another. (Tr. 2351-52)

Purex used coupons with the introduction of its new bottle in Erie but did not do so in Evansville. (Tr. 1062)

Bennett testified that "every manufacturer changes his plans from time to time. Any given set of ads or any given promotion will get stale in time and those have to be constantly changed, seeking new ideas, new applications to the problem." (Tr. 4476-77)].

106. There is no proof that any of the types and methods of advertising and promotion used by Procter and other manufacturers in the consumer goods industries was not known to and used by one or more producers in the household liquid bleach industry.

[Note: In addition, certain advertising and promotional methods are better suited and more particularly adapted to regional and local manufacturers than to a national manufacturer. For example, Roman Cleanser sponsors a bowling team (CX 522) and Gardiner shared in the maintenance of a booth at a county fair (Tr. 2962-63). In addition, regional and local producers have the ability to take advantage of unexpected advertising and promotional opportunities requiring immediate action (Tr. 4480).]

107. There is no proof that there are any specialized or unique services in the field of advertising and promo-

tion available through the Procter organization which are not equally and as inexpensively available from independent private sources. For example, prior to the acquisition, Clorox Chemical (as does Clorox) had available to it, through its advertising agency, media and marketing data and information, specialists in television, radio, copy, art and so forth.[1]

Record support: [1] Bellingall, Tr. 5011-14.

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a) The significance of advertising and promotion.

108. Advertising and promotion, regardless of the amount, can have no lasting beneficial effect on an inferior product.

> [Note: Morgens: "Quality is the primary requirement. You can't sell anything without quality, no matter how well you advertise . . . you can sell it once, but you can't get the housewife to come back to purchase it." (Tr. 505-6).
>
> Leazar testified that "Quality and such business as that" is the "fundamental starting point" in obtaining consumer acceptance and that the consumer is not going to buy a product that isn't any good. (Tr. 4080).
>
> Bissmeyer testified that if the quality isn't satisfactory, the consumer won't buy it at any price. (Tr. 4857-58).]

109. Wherever there is appreciable competition, advertising and promotion will not materially or profitably increase the sales of an established brand with as high a share of market as Clorox, although to cease advertising and promotion would produce a loss.

> [Note: Morgens: "Any brand with a high share of market is very vulnerable. We don't know of any

brand that's been able to retain as high a share of market, our own included, over any period of time, when someone wants that business, is willing to enter a new field, or—when someone wants to enter and hold the bleach business, it is inevitable that we will lose some share . . . it would be very unprofitable for us to spend the kind of money that is necessary to retain that kind of share." (Tr. 822-3).

Bellingall testified concerning any objective to increase the Clorox share, "We have our hopes in this direction, but the expectancy is not too great when you have a brand position as Clorox has. It is difficult to increase share against aggressive competition." (Tr. 5063) [sic, but see Tr. 5257].

In testimony subsequently stricken, Morgens stated that even if Procter & Gamble had greater power and were willing to use it, it would not be a practical thing to do because the cost of getting any additional share of market would be much greater than would be justified by any additional volume that might be secured. (Tr. 5515-16).]

110. In the case of established products, such as Clorox liquid bleach, promotions may result in temporary gains in market share which, following the promotion, recede to their former level.[1]

[Note: In the only instance (Erie, Pa.) in which complainant sought to relate the effect of a Clorox promotion to market share, the evidence shows that despite increases in market share during the promo-

Record support: [1] Chaddock, a Clorox distributor, stated that promotions have a momentary and not a lasting effect on market share (Tr. 1232).
Olkin of Rose-Lux testified that the cents-off label promotion gave a "shot in the arm" (Tr. 2449).
Hahn of Linco testified that promotions temporarily increase market share and that gains are not always maintained but the market position is generally solidified (Tr. 2190).

tional period the Clorox share after the promotion returned to its former level (CX 450). No surveys similar to CX 450 were introduced by complainant for other areas in which Purex introduced its new bottle although such surveys, at least for Evansville, were made and subpoenaed by complainant (Tr. 1577) but not offered. Also, Mr. Stoneman was requested to bring those surveys with him when he testified in Washington but did not do so (Tr. 5724-26). It is reasonable to presume that if such surveys had been supplied, they would have been adverse to the complainant and would have shown that the Purex market share was unaffected by the Clorox counter-promotion.

Also RX 88 introduced by the respondent as the best evidence obtainable by it shows during the period of the Clorox promotions in Erie, Pa., the Clorox share of market, according to a Nielsen audit of one medium independent store, decreased every bi-monthly reporting period.]

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2. *Advertising or promotional techniques or expenditures in one industry are no criteria for another.*

111. There is no proof that the advertising and promotional techniques or expenditures employed in one industry, such as the soap, detergent and cleanser industry, are equally applicable to another industry, such as the household liquid bleach industry, in which the number and size of competitors, the type of product and the frequency of use of such techniques differ.

[Note: Mr. Stoneman testified at Record 1696 that: "Yes, there is a higher frequency of use in promotion devices in package soaps, detergents and toilet soaps than there is in the bleach industry."

Mr. Stoneman also testified that free samples or coupons are rarely broadly used in the bleach in-

dustry; that cents-off labels are too expensive to use over a wide geographical area; and that the advertising cost in relation to net sales is lower than in the soap and detergent business (Tr. 1692-93).

Hearing Examiner: ". . . there would be definite differences [in the soap and detergent as compared to the bleach industry], depending upon the size and character of your competitors in the different industries. In other words, where you have, as there is in Clorox transactions, an industry in which Clorox is the largest and practically the only national distributor and the others are smaller, you have an entirely different situation, competitive-wise that Procter & Gamble will have to contend with than you have in an industry where you have a half dozen active, strong competitors . . ." (Tr. 3764).]

112. There is no proof as to what amount of expenditure for advertising and promotion of a household liquid bleach would be comparable to amounts expended for advertising and promotion of soaps, detergents or cleansers.

113. There is no proof that there is any probability that the same or similar amounts of money expended by a manufacturer on the advertising and promotion of new products such as Comet, Gleem and Crest would be expended in the advertising and promotion of a long established product.

[Note: Hearing Examiner: "When Procter & Gamble goes into any industry or field, market, to sell its products, it is met with varying competitive conditions, and we can't assume that Procter & Gamble would necessarily have to spend the same amount of money, or any given amount of money, in order to sell Crest, for instance, or some other item, in another industry, other than the bleach industry . . ." (Tr. 540, 3646-47).]

Proposed Findings of Fact

3. *The acquisition has resulted in no change in the media used in the advertising of Clorox liquid bleach, and any change of emphasis in the use of media is not attributable to the acquisition.*

114. Prior to the acquisition Clorox Chemical made extensive use of various advertising media in the marketing of Clorox liquid bleach. This policy has continued after the acquisition and for both Clorox Chemical and Clorox the major portion of their expenditures for advertising and promotion since at least 1953 was for the purchase of advertising media.

Record support: RX 83.

115. Clorox Chemical began using TV spots in July, 1956 and the use of this type media has been continued by Clorox.[1]

[Note: While Clorox continued to spend increasing sums for TV spots after the acquisition, this was but the extension and effectuation of the policy established by Clorox Chemical prior to the acquisition (Morgens, Tr. 3394)].

Record support: [1] CX 407-A-C.

116. Clorox Chemical began using radio spots in the last part of 1956 and continued to use them after the acquisition in the Southeastern United States region only. Neither Clorox Chemical nor Clorox has used radio programs.

Record support: Bellingall, Tr. 5070-77; 5241-43; 5261; CX 406.

117. Clorox Chemical did not use, nor does Clorox use, network TV.[1] TV Spots for Clorox are preferable to net-

Record support: [1] Morgens, Tr. 574, 579; Shaver, Tr. 1421; Trimpe, Tr. 4946-47.

work TV because the flexibility of spot TV permits adjustment of the advertising weight given the brand depending upon the brand's volume of business in any particular area,[2] which volume varies greatly in the case of Clorox. There is also evidence that this also applies to radio.[3]

Record support: [2] Bellingall, Tr. 5102, 5316-17. The Hearing Examiner said that he would almost take judicial notice of this fact. Tr. 5318-19.
[3] Kunin, Tr. 2352.

118. In the opinion of the Clorox advertising account executive, 60 second TV spots are preferable to 20 second TV spots for the advertising of Clorox, because they are a better vehicle for the brand's advertising message.[1] Initially it was difficult to obtain the desired 60 second spots and the schedule since 1956 has been gradually modified to replace 20 second with 60 second spots as the latter became available. 60 second and 20 second TV spots cost the same on most stations.[2]

Record support: [1] Bellingall, Tr. 5304, 5097.
[2] Bellingall, Tr. 5096-5101, 5304-10. The Hearing Examiner said that he would take judicial notice of the fact that 20 second and 60 second spots usually cost the same (Tr. 5312).

119. There is no proof of any probability that there will be any joint sponsorship of television or radio programs by Clorox and other Procter brands. Moreover, there is no proof that any advantages would accrue by reason of any such sponsorship, or that joint sponsorship is not available and equally effective when engaged in by unrelated companies. In many cases Procter brands cosponsor programs with brands of other manufacturers.[1]

[Note: For example, Prescott participated with others in the Morgan-Baker show (Tr. 2610-11).

Linco sponsors five minutes of the 15-minute Dorsey-Conners TV show (Tr. 2240-41).]

Record support: [1] Snow, Tr. 3466; CX 575.

120. Prior to the acquisition Clorox Chemical advertised extensively in magazines. There has been a substantial reduction in spending by Clorox for magazine advertising since the acquisition, as well as a reduction in the number of magazines in which Clorox is advertised.[1] There is no proof that the reduction in total expenditures for magazine advertising was a result of or affected in any way by the acquisition.

Record support: [1] Morgens, Tr. 3401; Shaver, Tr. 1445-46; CX 402, CX 403, CX 404A-B, CX 405A-E; RX 83.

121. Prior to the acquisition Clorox Chemical advertised extensively in newspapers. Such advertising has continued since the acquisition [1] and there is no proof that there has been any change in policy or practices.

[Note: The complainant, with the introduction of CX 546, attempted to show an increase in the newspaper lineage of Clorox in 1958 as compared to 1957 (Tr. 3493). That exhibit was seriously in error and was subsequently stricken upon a showing that the periods used were not comparable (Tr. 5387). Complainant indicated that a new exhibit would be prepared for rebuttal but none was submitted (Tr. 5386). In any event, a variation in newspaper advertising in different periods and for different purposes is not and has not been shown to be of any significance (Tr. 5383).]

Record support: [1] Morgens, Tr. 578; RX 83.

122. It is normal and customary advertising practice and procedure to change, from time to time, the emphasis

given any particular medium, or to change from one medium to another.[1] Thus the fact that there may have been changes in the relative use, by Clorox, of various media after the acquisition, is no proof that such changes were occasioned by or resulted from the acquisition.

[Note: The Hearing Examiner expressed this view at Tr. 5976-77.]

Record support: [1] MacDonald, Tr. 2331-32; M. Giachetti, Tr. 2236.

4. *Certain relatively small rate discounts are available to Clorox as a result of quantity purchases of certain media but these are of no significance in the overall advertising of Clorox liquid bleach and could result in no lessening of competition.*

123. Discounts are generally available to an advertiser dependent upon the total quantity purchased by the advertiser in any one type of media from any one source. The amount of the discounts which may be realized appear on the published price schedules.

Record support: Morgens, Tr. 572; Stoneman, Tr. 1776-82.

124. Advertisers, in general, including Procter and Clorox, buy media which best suit their needs and the type and placement of advertising are not determined by the discounts, if any, to be realized.[1]

Record support: [1] Morgens, Tr. 577; Shaver, Tr. 1401; Snow, Tr. 3422-23.

125. The maximum estimated savings to Clorox resulting from the joint buying by Procter and Clorox of television advertising is only $86,000 per year, and of radio advertising is $500 per year.[1]

Record support: [1] Shaver, Tr. 1463; Morgens, Tr. 3234.

Such savings are *de minimis* in terms of Clorox's annual net sales.[2]

Record support: [2] CX 12 (annual sales for year ending June 30, 1957 of $39,999,114.11).

126. The maximum estimated savings to Clorox in the purchase of magazine advertising is only $50,000.[1] Such savings are *de minimis* in terms of Clorox's annual net sales.[2]

Record support: [1] Shaver, Tr. 1463; Morgens, Tr. 3234.
[2] CX 12.

127. The maximum estimated savings to Clorox in the purchase of newspaper advertising is infinitesimal ($2,000) whether measured in total dollars or in relation to a dollar of sales.[1]

Record support: [1] Shaver, Tr. 1397-98, 1455, 1458; Morgens, Tr. 3234; CX 12.

128. There is no proof and no inference can be drawn that such savings would materially affect the quantity or effectiveness of the advertising, or that such savings would have any substantial effect upon the operations of Clorox.[1]

Nor can any inference be drawn that such discounts, however small, represent competitive advantages over other bleach producers, since local manufacturers in numerous instances can obtain TV spots at a lower rate than a national advertiser such as Clorox or Procter [2] and local advertisers can obtain local rates for newspaper advertisements which are not available to a national advertiser.[3]

Record support: [1] See also Finding 155 in which it is noted that advertising costs have increased substantially, thus further minimizing any small discounts.
[2] Bellingall, Tr. 5077, 5277-79.
[3] Morgens, Tr. 675-6.

In any event any savings in advertising costs would have significance only if it were shown that Clorox was unable to finance advertising activities without such savings. There is no such proof here.

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5. *No change in the type or extent of promotional activities has resulted or may probably result from the acquisition.*

129. Prior to 1953, Clorox Chemical divided its expenditures for advertising and promotion between advertising media and promotional activities, with a slightly greater expenditure for advertising.[1] In 1953, promotional expenditures in the form of factory allowances were temporarily dropped in favor of increased consumer advertising.[2] On the basis of an increasing awareness of intensified competitive activity, Clorox Chemical's advertising agency in 1955 recommended, in conjunction with continued national advertising, a return to the use of promotions on a national basis[3] in order to provide a unified sales program for the selling force, to lengthen the peak selling season and to expand the number of household uses for liquid bleach.[4] At the same time Clorox Chemical expressed an interest in the development of small-scale type promotions, inappropriate for national use, to be used as counters to localized competitive activity.[5]

Record support: [1] Bellingall, Tr. 5023; RX 83.

[2] Bellingall, Tr. 5023-24. In 1947, Clorox Chemical, acting on its agency's recommendation, shifted its emphasis from educational type consumer advertising to advertising of a more competitive nature. This proved so successful that by 1953, promotional expenditures in the form of factory allowances were temporarily discontinued.

[3] Bellingall, Tr. 5026-27.

[4] Bellingall, Tr. 5031-32. Advertising and promotion encouraging new or additional uses helps all liquid bleach producers (Bellingall, Tr. 5035-36). Hearing Examiner said he would almost take official notice of this fact (Tr. 5036).

[5] Bellingall, Tr. 5032.

(a) Clorox has continued to use the same national promotions as were used by Clorox Chemical.

130. The first national type promotion put into effect by Clorox Chemical was the "Nylon-Rayon" promotion used in the spring of 1956.[1] This promotion was based on research conducted by Clorox Chemical, showing that liquid bleach could be used safely on synthetic fibers.[2]

Record support: [1] Trimpe, Tr. 4410; Bellingall, Tr. 5032.
[2] Bennett, Tr. 4470; Bellingall, Tr. 5032-34.

131. The "Nylon-Rayon" promotion was essentially a one-time type of promotion and was not suitable for repetition. In the interest of developing a promotion on a national scale that could be repeated annually or semi-annually, the Fall and Spring Housecleaning type promotions were developed and first utilized in the fall of 1956,[1] and in the spring and fall of each year thereafter[2] without change in the basic structure and concept of the promotion as originally devised.

Record support: [1] Matson, Tr. 1138-39; Trimpe, Tr. 4409-10; Bennett, Tr. 4470-71; Bellingall, Tr. 5034.
[2] Bellingall, Tr. 5039-40.

132. The basic concept of the Spring and Fall Housecleaning promotion was to obtain in-store displays of Clorox in connection with high profit margin, slow-moving items, such as brooms, mops, waxes, polishes and pails.

Record support: Trimpe, Tr. 1301-02, 1357-58, 4895; Shaver, Tr. 1432-34; Bellingall, Tr. 5083-84; CX 214; CX 411, CX 412; RX 98 A-F, RX 99 A-Z 31, RX 100, RX 101, RX 102, RX 103, RX 104, RX 105, RX 106, RX 107.

133. Aside from recommending to their distributors the general types of related items for in-store displays, neither Clorox Chemical nor Clorox nor Procter has any control over the products displayed with Clorox as a part of the

Spring and Fall Housecleaning in-store displays.[1] There is no proof from which any inference can be drawn that there has been or probably would be any change in this situation by reason of the acquisition.

Record support: [1] Trimpe, Tr. 1303-4.

134. The ability of Clorox Chemical in the field of national promotion and the effectiveness thereof, prior to the acquisition, is demonstrated by the fact that for its Spring 1957 promotion, Clorox Chemical received a "Top Promotions of the Year Award" from *Food Field Reporter* based upon a survey among grocers as to which promotions the grocers considered to be more profitable for themselves.[1] A similar promotion in the spring of 1958 won the same award.[2]

Record support: [1] Bellingall, Tr. 5041-43; RX 108.
[2] Bellingall, Tr. 5045. For its local advertising compaign in 1953, Clorox Chemical had also won an award from *Food Field Reporter* (Tr. 5044).

135. Except for refreshing the theme and motif of the Spring and Fall Housecleaning promotion, there has been no change in the basic structure and concept of the promotion as it was originally devised in 1956,[1] and as it has been continued since the acquisition. There is no proof, or any evidence from which any inference could be drawn, that these national promotions would be basically changed or expanded by reason of the acquisition.

Record support: [1] Bellingall, Tr. 5040.

(b) Post-acquisition local promotions of Clorox liquid bleach were not caused by the acquisition, but are of a type known to Clorox Chemical and were used to meet competitive developments arising after the acquisition.

136. In the household liquid bleach industry, as is generally true of consumer goods industries, it is usual and customary for one competitor to take notice of and seek to meet the competitive activities of another.[1] There are many different ways to compete and as many methods of meeting such competition. The choice of method, timing and frequency is a matter of judgment and selectivity.[2]

Record support: [1] Hearing Examiner indicated "I will take official notice of that. Of course. That is human behavior." (Tr. 4370).
[2] Bellingall, Tr. 5210-11, 5214, 5326. ("We can't counter them [competitive promotions] all. They are going all the time.")

137. The national type promotions heretofore mentioned, in conjunction with national advertising, have been used by both Clorox Chemical and Clorox to meet the usual, day-to-day advertising and promotional activities of competitors in the household liquid bleach industry.[1] In those special situations, however, where increased and accelerated activity by competitors presented more than the usual threat to Clorox market position, small-scale promotions were developed to counter such localized competitive activity.[2]

Record support: [1] Trimpe, Tr. 5544-5560; Bellingall, Tr. 5326.
[2] Bellingall: "Threat to our marketing position to warrant a counter promotion." (Tr. 5326); "Development of small-scale promotions as counters to localized competitive activity." (Tr. 5032)
Trimpe: "To counter the introduction of a new Purex bottle." (Tr. 5539)

138. Prior to the acquisition, advertising and promotional expenditures of Clorox Chemical were, in the main, spread evenly throughout the country but there were numerous exceptions, such as the use of radio spots in the southeastern United States, and varying promotional al-

lowances dependent upon the particular territory in which used.[1]

Record support: [1] Bellingall, Tr. 5061-62.

139. With the initial marketing of the new patented Purex bleach bottle, Clorox was faced with one of its strongest competitive situations since at least 1955.[1] The new bottle was characterized by Purex as the "first major improvement in the packaging of liquid bleaches in the industry's history." [2]

Record support: [1] Trimpe, Tr. 5545-46.
[2] RX 114, p. 7.

140. In order to counter the adverse competitive effect stemming from the introduction of the new Purex bottle in several major cities, Clorox utilized small-scale localized promotions or increased its local advertising. In other markets, Clorox did nothing. In still others it relied upon the national-type housecleaning promotions which were then being conducted in those markets,[1] to protect it from any substantial loss of its market position.

[Note: In response to a question by the Hearing Examiner, Trimpe stated that previously Purex and Roman Cleanser had introduced a three-quart bottle, and that Clorox Chemical immediately met the threat and got a bottle of its own. Clorox Chemical did not market its three-quart bottle, however, since it felt the trade would not accept it. (Tr. 5546).]

Record support: [1] Trimpe, Tr. 5544-45; Shaver, Tr. 1425-26; Brown Tr. 1063.

141. These counter promotions consisted of the use of price-off labels in Erie, Pennsylvania and Evansville, Indiana, and the use of several other small local-type promotions such as label coupons, newspaper coupons, premium

or merchandise packs and self-liquidating premiums.[1] These types of promotion had previously been used by other bleach producers including Purex itself, and were thoroughly known to the Clorox advertising agency and management.[2] None were used which had not previously been conceived or considered prior to the acquisition,[3] some as early as 1955.[4]

Record support: [1] Trimpe, Tr. 1326-27; Morgens, Tr. 3377-81; Bellingall, Tr. 5203-04.
[2] Trimpe, Tr. 1328-29; Bellingall, Tr. 5073. The Hearing Examiner stated that he had the impression from the testimony that Bellingall had in mind a number of promotion practices that were "well-known in the industry, in the advertising agency." (Tr. 5126.)
[3] Bellingall, Tr. 5208.
[4] Bellingall, Tr. 5298.

142. Since the acquisition, Clorox has also used a 5 cents off-label promotion in the Linco and Roman Cleanser marketing areas in Illinois, Wisconsin and Michigan.[1] This localized promotion was used to counter a series of 5 cents off-label packs which had been initiated by the manufacturers of Linco and Roman Cleanser bleaches.[2] This type of promotion had previously been used by other bleach producers, was well known to everyone and did not represent any new or unique promotion on the part of Clorox.[3] The too frequent use, however, of a reduced price label for household liquid bleach tends to break down the basic price structure and to cheapen a prestige product,

Record support: [1] Trimpe, Tr. 5546, 5584-85.
[2] Trimpe, Tr. 5546-48. Trimpe testified that after he joined Clorox Chemical he had taken certain measures, which had not worked out, to offset the effect of the cents off-label packs by Linco and Roman Cleanser. (Tr. 5548).
[3] Hahn, Tr. 2149-50, 2169-70; Kunin, Tr. 2354-55; Olkin, Tr. 2449; Riccardi, Tr. 3030, 3033, 3037-38, 3080-84; Bellingall, Tr. 5073.

such as Clorox, in the opinion of the Clorox account executive.[4]

Record support: [4] Bellingall, Tr. 5094, 5301. The Hearing Examiner commented that he was familiar with the same problem in another industry. (Tr. 5094-5).

143. Since the acquisition Clorox has also used a self-liquidating ironing board cover premium promotion in the southeastern and southwestern areas of the United States. Such promotion was designed to counter increased competitive activity in these areas, such as was reflected in the decline in gallon sales in the southeastern United States.

Record support: Trimpe, Tr. 1327-28, 5574, 5579-80, 5590-92; Morgens, Tr. 3369.

144. Since the acquisition, when Clorox has used coupons and premiums in its localized counter promotions, it has utilized the Procter redemption services.[1] Independent agencies, are however, available to everyone for the distribution and redemption of coupons and premiums. Coupons distributed by these organizations may be included with coupons of other manufacturers, such as Coca-Cola. There is no proof that use of such independent agencies is more expensive or less effective than Procter's own services.[2]

Record support: [1] Trimpe, Tr, 1386. Bellingall stated that in discussing whether to use Donnelly (an independent agency) or local collection services, Mr. Shaver suggested the use of Procter services. (Tr. 5288-89).

[2] Stoneman, Tr. 1935-36; Gardiner, Tr. 2895-96, 2904; Jones, Tr. 2977-78.

145. There is no proof that since the acquisition Clorox can purchase premiums on more favorable terms than

any other bleach producer or on more favorable terms than could Clorox Chemical.

146. There is no proof that the utilization of any facilities of Procter with respect to the redemption of coupons or the purchase or redemption of premiums can or probably would result in any adverse effect on any competitor in the bleach industry.

147. There is no proof that the type, the timing or frequency of any of the small local-type promotions used by Clorox were a result of or affected by the acquisition.[1] There is no proof that these promotions were instituted by Clorox until there had been increased promotional activities on the part of its competitors.[2]

Record support: [1] Bellingall testified in answer to a question whether this type of promotion had been affected by the acquisition: "No, the types of promotion that we have employed since the acquisition were thoroughly known to us." (Tr. 5073).

[2] Bellingall stated that after the merger, new competitive conditions made it desirable, from his standpoint, to use some of these promotions. (Tr. 5073-74). In testimony subsequently stricken, Trimpe stated that the acquisition had no influence on his decisions to use the various promotions to counter the Purex bottle. (Tr. 5544).

148. Such localized promotions as were used by Clorox since the acquisition were those deemed by its management to be necessary and desirable in the light of then existing competitive conditions in particular areas.[1] It is not claimed by respondent that the business judgment of the Clorox management was in each instance correct as to the need, or lack of need, or as to the anticipated results, of each such promotion. There is no proof, however, that such business judgment was unsound or that its exercise was affected by any considerations other than normal and proper business factors.

Record support: [1] Bellingall, Tr. 5210-11, 5214, 5326.

(c) There are other types of promotions such as limited sampling and in-store broadcasting known to and sometimes used by producers of household liquid bleach.

149. Any wide scale sampling of household liquid bleach is not reasonably probable since it cannot be sampled by mail and is not practical for door-to-door sampling. Because of its bulk, its weight and the high breakage factor, it is awkward and expensive for home delivery and dangerous to leave the sample unattended on the doorstep.[1] The factors which preclude wide scale door-to-door sampling do not, however, prevent limited sampling such as the Purex Nancy Sasser promotion,[2] the Clorox Cooking School demonstrations and Cradle Car Service, among others.[3]

Record support: [1] Stoneman, Tr. 1691-92, 2016; Prescott, Tr. 2582; Buchman, Tr. 2789-90; Bellingall, Tr. 5074-75; Trimpe, Tr. 4420, 4955-56.
[2] Stoneman, Tr. 1904.
[3] Shaver, Tr. 1488-89.

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150. Independent merchandising services such as "Storecast" and "Beamcast" have been available to and used by household liquid bleach producers both before and after the acquisition.[1] Such organizations operate spot announcements in grocery stores and on FM (local) radio; check movement of advertised items; check inventory with the store manager to aid in the elimination of out-of-stock; install shelf space reservers to indicate facings allocated by the store manager; call to the attention of store managers any out-of-stock items;[1] obtain adequate distribution; obtain preferred shelf position; obtain increased shelf

Record support: [1] Buchman, Tr. 2794, 2814-19 (The witness indicated that he received about 20 radio spots a week from Storecast); Gardiner, Tr. 2860-61, 2900.

frontage; and obtain off shelf displays.[2] While such services are used by some national producers, they are particularly adaptable for use by regional or local producers, at costs which are relatively low.

[Note: In one instance, the management of a grocery chain (Loblaw) thought it necessary to restrict the activities of Beamcast representatives in seeking to obtain shelf space, and advised the supervisors of the chain that these representatives were not to "dictate" shelf facings. (Stipulation, Tr. 6041-2.)]

Record support: [2] Buchman, Hr. 2816-18; Gardiner, Tr. 2860-61, 2905-2909; Bennett, Tr. 4511-18; Loblaw Stipulation, Tr. 6040-43; Beamcast Stipulation, Tr. 6052-55; RX 27.

151. In addition to those specific promotional methods previously discussed, there are many other types of promotional methods which have been used in the household liquid bleach industry, such as contests, count and recount, banners, pennants and window bolsters, among others. There is no proof that any advantage, as a result of the acquisition, results or probably could result to Clorox if it were to use these or any of the several types of promotional devices.

Record support: See Finding 103 for references to these promotions.

E. THERE HAS BEEN NO INCREASE IN THE RATE OF SPENDING FOR THE ADVERTISING AND PROMOTION OF CLOROX LIQUID BLEACH SINCE THE ACQUISITION AND NO PROOF THAT AN INCREASE IS PROBABLE OR ECONOMICALLY JUSTIFIED.

152. Clorox has not spent more per case for advertising and promotion than Clorox Chemical did prior to the acquisition.[1]

Record support: [1] Morgens, Tr. 828; Towers, Tr. 4645; Bellingall, Tr. 5059-60; RX 83.

Proposed Findings of Fact

153. The per case rate expenditure by Clorox for advertising and promotion in the initial fiscal period following the acquisition (that ended June 30, 1958) was slightly lower than the average for the five-year period ended June 30, 1956, and was equal to the advertising and promotional expenditure for the fiscal year ended June 30, 1957.

Record support: Towers, Tr. 4645; RX 83.

154. The per case rate expenditure by Clorox Chemical and by Clorox for advertising and promotion has been stable (although there have been minor variations) since 1953.[1] The present per case rate was established through experience and it effectively serves the advertising and promotional needs of the Clorox brand.[2]

Record support: [1] Bellingall, Tr. 5059-60.
[2] Bellingall, Tr. 5065.

155. Although, in line with increases in total case sales by Clorox and by the bleach industry generally, the total dollar advertising and promotional expenditures of Clorox for the first year following the acquisition showed an increase over those expenditures for the preceding year, the per case rate remained constant due to the increased number of cases sold.[1] The total expenditures, however, do not represent a corresponding increase in the total volume of advertising and promotion actually obtained, because advertising costs increased substantially in the year following the acquisition.[2]

Record support: [1] Bellingall, Tr. 5258-59, 5272-73; RX 83.
[2] Bellingall, Tr. 5077-78, 5267-74.

156. The amount of expenditures for advertising and promotion suitable for Clorox would not necessarily be

suitable for other consumer goods, such as those sold by Procter. Each brand meets competitors in its own particular industry and has its own rate of turnover. Hence, the rate of expenditure that can be economically spent in advertising and promoting each particular brand is individual as to it, taking into account all marketing circumstances and conditions.

Record support: Bellingall, Tr. 5069-70.

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157. The total amount expended by Procter in advertising and promoting all of its products, or any one of them, has no significance and is meaningless in comparison to the amount that should be spent or might with reasonable probability be spent in advertising and promoting a particular brand in the household liquid bleach field.[1]

[Note: The Hearing Examiner commented: "We cannot, it seems to me, measure the amount of money that Procter & Gamble should be required to spend, or should spend, in the liquid bleach industry, by what it may have spent in a detergent industry, or some other industry." (Tr. 541)]

Record support: [1] Morgens, Tr. 531, 665.

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158. No valid conclusion, supported by the record, can be reached as to the amount of advertising and promotional expenditures appropriate for Clorox, which advertises nationally, as compared with the amount of such expenditures appropriate for liquid bleach producers who distribute locally or regionally.

159. Clorox has, since the acquisition, maintained its own advertising department, separate from Procter's, and

has its own advertising agency.[1] There is no proof that any change in this arrangement would be advantageous either to Clorox or Procter. Nor is there any proof that any such change is reasonably probable. In fact, Procter itself uses various advertising agencies for its major product brands.[2]

Record support: [1] Shaver was advertising manager for Clorox Chemical and continues with new Clorox. The advertising agency is the same. (Morgens, Tr. 488). All advertising and sales personnel and the advertising agency of Clorox Chemical have been retained. (Brown, Tr. 1043). Bellingall was the account executive in 1955. (Trimpe, Tr. 4413). Honig-Cooper has been the advertising agency for Clorox since 1928. (Bellingall, Tr. 5011).
[2] Morgens, Tr. 572.

160. The undisputed evidence shows that an increase in the per case rate expenditure for the advertising and promotion of Clorox would not be economically sound. No such increase has been recommended by the agency or suggested by Procter or Clorox.[1] Nor is there any evidence that any such increase is reasonably probable.

Record support: [1] Bellingall, Tr. 5065-73, 5121-22, 5259-60.

1. *There is no proof that the availability of additional funds by reason of the acquisition will result in any advantages to Clorox, in terms of advertising or promotion or otherwise.*

161. Clorox Chemical, at the time of the acquisition, had approximately $4 million in cash and marketable securities, an amount in excess of the needs of its business.[1] This amount was available for any increase in its advertising and promotional expenditures which might have been deemed desirable. Neither the Clorox Chemical management nor its advertising agency was, through lack of

Record support: [1] Morgens, Tr. 498-9.

funds or otherwise, limited in or precluded from engaging in any additional advertising or promotional programs which they deemed desirable.[2]

Record support: [2] Matson, Tr. 1153; Trimpe, Tr. 4860-61; Bellingall, Tr. 5073, 5266; CX 13.

162. There is no proof that at the time of the acquisition, or since, Clorox needed or could use any additional funds from any source, for advertising, promotion or any other purpose, or that the acquisition has made available to Clorox any additional financial advantages which could be or might with reasonable probability, be used by Clorox.[1]

Record support: [1] Mr. Morgens testified that with the exception of introductory periods for new products, each Procter brand earns its own advertising and promotional money. There is no pool of funds on which a particular brand may draw for advertising and promotional monies if it is not earning its way. (Tr. 569, 601).

F. THE ACQUISITION HAS NOT HAD AND THERE IS NO PROOF THAT IT PROBABLY WILL HAVE THE EFFECT OF LESSENING COMPETITION OR TENDING TO MONOPOLY BY REASON OF ANY ADVANTAGES IN TERMS OF SHELF SPACE OR OTHER ASPECTS OF MARKETING THROUGH GROCERY STORES.

1. *Shelf Space (General considerations relating thereto).*

163. Neither Clorox nor Procter can or does, nor is there any reasonable probability that either can or will, control the amount or location of grocery store shelf space.

[Note: Basic to the problem of shelf space, as will be indicated in subsequent findings, is that physical limitations of space in any grocery store, no matter how large, make it impossible for any grocer to stock all brands of any given product and also make it impossible to accord all products which are stocked the

same amount of shelf space or the amount which any producer would like to receive. Unquestionably these limitations have an impact upon the volume of sales of any brand of merchandise which is generally marketed through such stores.

It is our position, however, that if there be imperfections in the operation of the competitive system by reason of any scarcity of distribution channels which are available to manufacturers, no claim can be made that this aspect of grocery store marketing has been influenced or controlled by either Clorox or Procter or that it furnishes any criterion for gauging any alleged anti-competitive effects resulting from the acquisition, or that it will be affected in any way by the acquisition. Both Clorox and Procter, as well as substantially all other manufacturers of products which move through grocery stores, must take this distribution system as they find it. This situation has not been affected by the acquisition.]

Record support: Morgens, Tr. 602-3; Eubanks, Tr. 4588; Loblaw Stipulation, Tr. 6039-43.

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164. Shelf space is and has been controlled by the grocery store or chain. In the case of grocery chains the decisions as to the allocation and location of the shelf space for any product are generally made by the local store manager but in some instances are made by a chain's regional or divisional management.[1]

Record support: [1] Morgens, Tr. 739-41; Leazar, Tr. 4028; Eubanks, Tr. 4588.

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165. The amount of shelf space allocated to an established product in a grocery store is and has been mainly influenced by the movement, i.e., sales, of the individual product.

[Note: The Hearing Examiner stated that the shelf space allowed any commodity depends upon the movement of the product (Tr. 4448).]

Record support: Stoneman, Tr. 1554; Kunin, Tr. 2366; Olkin, Tr. 2452; Brower, Tr. 2698; Riccardi, Tr. 3048; Leazar, Tr. 4028-9; Beamcast Stipulation, Tr. 6054.

166. Movement of any product through a grocery store in turn depends upon a number of factors including quality, price, personal relationship of salesmen, attractiveness of package, novelty of the item, experience and familiarity of consumers with the product, as well as advertising and promotion and no one factor can be said to be determinative.

[Note: The evidence is succinctly summarized in the comment of the Hearing Examiner to the effect that shelf space is allocated "in proportion to what is going to make him [the retail merchant] the most money. The storekeeper is interested in profits on the moving stock. Naturally he is going to give the shelf space to the stock that is moving." (Tr. 4453).]

Record support: Stoneman, Tr. 1554; Smooke, Tr. 1761-62; Kunin, Tr. 2367; Olkin, Tr. 2453; Prescott, Tr. 2576; Buchman, Tr. 2790, 2793-2794; Riccardi, Tr. 3048; Leazar, Tr. 4073-74, 4079-80; Eubanks, Tr. 4623. Gardiner testified that advertising and promotion had little if any effect on the amount of shelf space obtained. (Tr. 2875).

167. In practice, the faster moving products do not receive as much shelf space as their movement justifies.[1] Likewise, many slower moving products receive shelf space in excess of that which would be justified by their movement.[2] All manufacturers continuously seek to improve the shelf space accorded to their respective products.[3]

Record support: [1] Leazar, Tr. 4065; RX 60; RX 61.
[2] Morgens, Tr. 514; Leazar, Tr. 4028.
[3] Morgens, Tr. 512-3; Brower, Tr. 2698; Bennett, Tr. 4510.

Proposed Findings of Fact

[Note: As stated by the Hearing Examiner, "I have never seen any manufacturer satisfied with the amount of shelf space he got." (Tr. 4449).]

(a) Factors affecting the "stocking" of liquid bleach and the shelf space allocated to it.

168. The number of brands of liquid bleach customarily stocked in grocery stores varies. In certain stores or chains three brands are stocked, in others four, in others five.

Record support: Stoneman, Tr. 1551; Kunin, Tr. 2367; Prescott, Tr. 2582-83; Brower, Tr. 2700; Gardiner, Tr. 2872; Leazar, Tr. 4013-14; Eubanks, Tr. 4572-73; Bissmeyer, Tr. 4849.

169. Generally grocers stock and price liquid bleaches so as to afford their customers a choice as to both brand and price. The evidence indicates that customarily Clorox and at least one competing premium quality bleach are offered for sale on the grocery shelves at the same or substantially the same retail price. Also, customarily another brand or brands is on the grocery shelves which is sold at a lesser price, the differential varying in different areas and different stores.

Record support: Morgens, Tr. 504; Bissmeyer, Tr. 4852.

170. Grocery chains can and do sell liquid bleach profitably under their private labels at a lower price than they generally charge for a producer's brand.

Report support: Bissmeyer, Tr. 4847, 4849; Trimpe, Tr. 4932.

171. Grocery chains which have a private label liquid bleach customarily allocate the most advantageously located shelf space to their private label brand and also allocate a larger proportion of shelf space to such bleach than is allocated to any of the other competing brands on the

shelves. For this reason, private label liquid bleach is a significant competitive factor affecting the allocation of shelf space and the availability of such shelf space for Clorox or any competitive brand of liquid bleach.

[Note: When the Winn-Dixie chain introduced its private label bleach in Miami and Tampa, it allocated 50% of the space to its own private label bleach and the balance of the space was redistributed among the other liquid bleach brands proportionately (Tr. 5556). Since Clorox initially had more space than competitive brands, it consequently lost more space (Tr. 5557-58). This greatly affected sales of Clorox and practically killed sales in the gallon size (Tr. 5559-60). The effect of competition from private label bleach generally in the Southeastern United States was a loss of 20% in market share of Clorox in the gallon size (Tr. 5574, 5579-80, 5590-92).]

Record support: Trimpe, Tr. 4862, 4933. Although Clorox may not have been completely eliminated from a store because of the introduction of a private label, it has lost some sizes in which it was previously carried.

172. There is no proof that any manufacturer or producer of consumer goods moving through grocery stores can command consumer acceptance or can command valuable grocery store shelf space.

[Note: There is no proof that Procter has any peculiar or unique abilities to "command" any consumer acceptance of Clorox. Moreover, there is no proof that any Procter brand had ever achieved as wide a consumer acceptance in its particular field as had Clorox in the liquid bleach market.

In so far as any ability to command shelf space is concerned, the only evidence on the subject establishes that Clorox, prior to the acquisition, had a larger percentage of shelf space in relation to movement than did Procter's product COMET—its only product in the

cleanser field. (Nickelson, Tr. 4776-77, 4780-82; RX 95).]

2. *The addition of liquid bleach to respondent's "line" of cleansing and laundry products does not increase the ability of Procter or Clorox to increase shelf space or sales and is no competitive disadvantage to competing companies.*

173. There is no proof as to what products constitute "a complete line" of cleansing and laundry products, and there is no proof as to the existence of any such "complete line", as alleged in the complaint.[1] The usual product line of the bleach producers who testified for the complainant includes in addition to liquid bleach, blueing, ammonia and liquid starch,[2] none of which are manufactured by respondent.[3]

Record support: [1] Complaint, Par. 14.
[2] Smooke, Tr. 1754; M. Giachetti, 2068; Kunin, Tr. 2345; Olkin, Tr. 2440; Rinaldi, Tr. 2511; Prescott, Tr. 2564; Brower, Tr. 2658; Buchman, Tr. 2744; Jones, Tr. 2915; Mendleson, Tr. 3149.
[3] Morgens, Tr. 834-837.

174. Household liquid bleach is usually stocked in that section of a grocery store which includes starches, blueing, mops, buckets and other products in that general merchandise category.[1] This section is generally in the household cleaning division of the store.[2] A Nielsen survey which is undisputed shows that in over 60% of the stores included

Record support: [1] Morgens, Tr. 613-4; Leazar, Tr. 4030; Bennett, Tr. 4468-69, 4496; Eubanks, Tr. 4599, 4630.
[2] Gardiner, Tr. 2877; Stoneman, Tr. 1548; Brower, Tr. 2708-9; Buchman, Tr. 2796. Other witnesses for complainant testified that generally bleaches were stocked with the soaps, detergents and cleansers but their testimony is consistent with a finding that bleaches are generally stocked in the general household supplies or cleaning division of the store. (Olkin, Tr. 2466; Prescott, Tr. 2596-97; Rinaldi, Tr. 2524-25; Jones, Tr. 2942; Mendleson, Tr. 3181).

in the Nielsen survey group, household liquid bleach is not stocked immediately adjacent to package detergents or toilet soaps.[3]

Record support: [3] RX 96. Mr. Nickelson stated that if liquid bleach was intermingled on the shelf with detergents and soaps, it would be classified in the "immediately adjacent" category of the survey (Tr. 4790). The percentage of stores in which liquid bleach is not stocked immediately adjacent to package detergents and toilet soaps is over 71% if the individual stores in the survey are weighted according to the dollar volume of business which they do (RX 96).

175. The fact that one company manufactures or produces and sells a number of products does not increase its ability to secure shelf space.

Record support: Leazar, Tr. 4030, 4061; Eubanks, Tr. 4589.

176. Neither Procter nor any other manufacturer has any power to force sales of one or more products upon a wholesaler or retailer by virtue of the fact that such manufacturer offers other products for sale through the same channels of distribution.

[Note: The witness Leazar, an executive of a grocery chain, in testifying as to any power on the part of Procter to force the purchase of Clorox in order for a retailer to obtain other Procter & Gamble products, said: "[It] just seems asinine to me because we run our own business. And no one has ever and I hope will never force us to buy anything we don't need. I would definitely say that is an impossibility." (Tr. 4031)

The witness Eubanks, a grocery merchandiser for the Kroger Company, who had supervision and control over the purchasing of products such as liquid bleach, soaps, detergents and cleansers, testified that: "I don't see how they [Procter] can possibly force us to buy the product." (Tr. 4598).

The testimony of these two witnesses was uncontradicted. Indeed, counsel for complainant, addressing himself to the quoted testimony of the witness Eubanks, stated that there was no allegation that Procter could force any grocer to buy anything (Tr. 4598). Despite this statement, counsel apparently determined, upon reflection, that he should qualify it and said: "No claim [of forcing] was withdrawn." (Tr. 4629).

In any event, we think that the undisputed testimony referred to above effectively refutes all implications contained in the complaint respecting any "power" of respondent to influence or affect the sale of Clorox through grocery stores by reason of the fact that it also produced other established products.]

Record support: Leazar, Tr. 4031; Eubanks, Tr. 4598.

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177. Likewise, there is no proof that the association of Clorox with other products manufactured by Procter would increase consumer demand for Clorox or increase its ability to secure shelf space.

178. Procter, as well as many other advertisers of consumer goods, customarily features the brand name and not the company name. It is doubtful that the housewife associates the name "Procter & Gamble" with the brands sold by Procter.[1] There is no proof that Procter's name has been or will be used in conjunction with Clorox for the purpose of influencing consumer acceptance. Further, there is no proof that if so used any advantage would result.

[Note: Buttressing the above finding is the uncontradicted testimony of Bellingall that the prestige of Clorox was greater in the bleach field than that of Procter's products in their respective fields (Tr. 5089). Likewise, Trimpe testified without contradic-

tion, that Procter brands did not have as much acceptance as Clorox in most of the Clorox sales territory (Tr. 1358). In this connection Morgens testified that Clorox had a higher market share than any Procter brand (Tr. 658).

Moreover, such "prestige" as Clorox enjoyed existed prior to, and was not affected by, the acquisition. In fact, complainant has contended that prior to the acquisition, the word "Clorox", itself, was a household word (Tr. 15).

It can also be expected, as indicated by the Hearing Examiner, that in areas where smaller bleach producers enjoy local prestige, they too, can be expected to have the bulk of the business (Tr. 4880-1).]

Record support: [1] Bellingall, Tr. 5088-91; 5290-91.

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179. There is no proof that any advantage would accrue to Clorox from tieing in the merchandising of Clorox with Procter brands or brands of other national manufacturers of consumer goods moving through grocery store channels. There is testimony that a prestige product like Clorox would have little to gain and might have something to lose through diffusing advertising impact and impression by means of such a tie-in.[1]

Record support: [1] Bellingall, Tr. 5082.

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180. The absence of any power on the part of Procter to increase shelf space allocated to Clorox or to force sales of Clorox is demonstrated by the fact that many chain stores which carry certain Procter brands do not carry others and from time to time discontinue the purchase and resale of other Procter products.[1]

Record support: [1] Morgens, Tr. 741-2; Leazar, Tr. 4029, 4069-70; Eubanks, Tr. 4589, 4623-4, 4626.

VII. The Testimony of Certain Representatives of Competing Bleach Companies, Offered by Complainant, Fails to Establish That the Acquisition will Probably Result in Any Lessening of Competition or Tendency to Monopoly.

[Note: In accordance with permission granted by the Hearing Examiner (Tr. 3865) Procter is renewing its motion to strike, as incompetent, the testimony of representatives of competing bleach companies as to their opinions concerning the effect of the acquisition.]

181. The opinion testimony of Clorox's competitors as to anti-competitive factors resulting from the acquisition is insufficient to sustain complainant's burden of proof as to any lessening of competition.

[Note: In preceding proposed findings, we have treated with the evidence as it relates to various aspects of the bleach business as to which the complainant has asserted that anti-competitive results might probably occur. We emphasize that with respect to none of them has the complainant shown any violation of Section 7. There remains only the testimony of representatives of competing bleach manufacturers. Certain of such witnesses were permitted to express their opinion as to "the effect, if any, of the acquisition" upon the business of their respective companies. We here set forth an analysis of that testimony. We submit that such analysis requires the making of the above Finding.

In most instances, the bias of these competitors and their self-interest is evident from the transcript. Apart from this, however, it is our position that their testimony is lacking in that degree of specification which is required to give it any probative value. Moreover, the speculation and conjecture indulged in by certain of these witnesses, as to what might be the

results of the acquisition, is directly in conflict with certain indisputable facts contained in the record.

The representatives of thirteen competing bleach manufacturers testified.

Representatives of two, namely, the Hood Chemical Company and Ladies Choice Foods, were not interrogated as to their opinions concerning the effect of the acquisition. Since a question concerning such an opinion was uniformly asked of a representative of each other competitor, we suggest that it is in order to invoke the presumption that had these witnesses been similarly interrogated their answers would have been adverse to the complainant. As to the others:

(1) *Stoneman—Purex Corporation, Ltd.* The testimony of this witness as to the effect of the acquisition upon the business of the Purex Company should be wholly disregarded. He testified that in his opinion the acquisition "will have a serious effect upon Purex's business, and Purex's ability to compete in the liquid bleach business." He coupled this with the qualifying statement "particularly if the same promotion devices which are normally used by Procter & Gamble are applied to the liquid bleach business" (Tr. 1814-5). We strongly urge that this testimony and the implications therein are effectively disproved by the record:

(a) Purex's business conduct subsequent to the acquisition belies any concern as to its ability to compete. Although Mr. Stoneman had also stated that the bleach industry was not one in which Purex wished to expand, the evidence shows that it purchased the John Puhl Co., manufacturer of the FLEECY WHITE brand of liquid bleach, more than a year after the acquisition and thereby greatly expanded its plants and sales area. This is not the conduct of one who fears that his ability to compete has been lessened. Rather we think it demonstrates, objectively and undeniably, that the acqusition is not regarded by Clorox's largest competitor as a deterrent to com-

petition or a limitation upon future successful operation in the liquid bleach business;

(b) More specifically, however, far from having any "serious effect" upon Purex's business, the actual sales figures (as will be set forth in subsequent findings in Section VIII hereof) show that sales of the Purex brand of liquid bleach in the year after the acquisition increased by more than one and a quarter million dollars over the sales of the preceding year; and that this was the largest increase in sales enjoyed by the Purex Company in any of the preceding four years. These sales were in addition to Purex's increasing volume of liquid bleach for sale under the private labels of some thirty-five grocery chains;

(c) In addition, the Purex financial figures and reports in evidence show that it is a growing and expanding company. No basis exists for an attempt to portray it as a pigmy in the bleach industry. Nor does any basis exist for any conclusion that it does not have the resources or the competency to compete aggressively and profitably.

The true situation as to Purex's future is best revealed by the statement in its 1958 annual report (RX 114) published more than a year after the acquisition. On p. 14 of that report there is the statement that: "we feel sure acceptance of our Purex liquid bleach will be greatly enhanced."

(2) *Giachetti—Linco Co.* This witness envisaged the possibility of adverse effects on his company growing out of the resources available to Clorox and the types of promotion used by Procter in putting out a new item. The witness testified that if these increased promotional activities were engaged in, Clorox would be able to get "probably more shelf space than competition" and that if all of these things happened they would "eliminate the small manufacturer like us." (Tr. 2089-90).

Here again, there is nothing to support the prophesies of this competitor. For this "small manufac-

turer", by his own admission, controls the major share of the market in the important Chicago metropolitan area and sold between 45% to 50% of all household liquid bleach sold in that area after the acquisition. Moreover, the witness further testified that Linco's sales of liquid bleach were increasing at the time of his testimony. These cries of "Wolf" by an aggressive and successful competitor are without substance.

(3) *Olkin—Rose-Lux Chemical Co.* In stating that the acquisition would be "bound to hurt our business" the witness first based this upon a premise which is contrary to the "facts of life" in the marketing of consumer items through grocery stores. He adopted the approach that Procter through "the full line forcing tactics" could use Procter's products as a "wedge to make [Procter's] customers buy more Clorox than they had been buying before." We submit that the evidence conclusively demonstrates that no such power exists on the part of Procter or any other manufacturer of items sold through grocery stores. (Also see Note to Finding No. 176 as to statements by complainant's counsel.)

The witness further said that *if* Procter applied the same promotion tactics to bleach as it did to soaps and detergents, it would ruin his business, because he could not afford to do anything like it and stay in business. The "if" upon which this answer was predicated has in no way been shown to be probable or likely in the liquid bleach industry. (Tr. 2470-71)

(4) *Rinaldi—No Worry Chemical Company.* This witness' answer to the pertinent question was indeed enigmatic, if not completely meaningless. His statement was that if Clorox was "going to go out and put deals on, I do not think we are going to last any longer than we have lasted now." (Tr. 2530). The witness is, of course, still in business and there is no evidence that his sales or market share have decreased since the acquisition.

(5) The testimony of five of the remaining competitors may be treated collectively. In essence, they expressed the opinion that if more aggressive merchandising and competitive activities were engaged in by Procter, their respective businesses would be adversely affected. None of these witnesses testified that it was threatened with failure or elimination. Typical of their opinion testimony are the following expressions:

(a) That if the promotions of the Clorox Company were continued and in addition other types of promotions were used, these "would definitely be harmful to our business" (*Prescott—J. L. Prescott Co.*, Tr. 2600).

(b) That because Procter would be able to use its experience in other products to increase sales of liquid bleach it would be more difficult to sell against a stronger competitor (*Brower—Sunlight Chemical Co.*, Tr. 2716-17). This witness recognized, however, that when a large competitor "pushes a product", such advertising brings it to the attention of more people and results in greater increased consumption, so that all elements in the industry benefit. (Tr. 2717)

(c) That he had learned to "live with Clorox" and was a "little bit apprehensive" of what might happen if Procter's methods of advertising and promotion were applied to the bleach business (*Buchman—Savol Bleach Company*, Tr. 2800-1). Moreover, this witness had testified that when he purchased his bleach business he had agreed with the sellers that he would only sell the Savol Bleach within a radius of 35 miles of Hartford, Connecticut. (Tr. 2776)

(d) That the witness was "scared" of the acquisition because he believed that Procter could promote Clorox better and cover the trade cheaper (*Gardiner—Gardiner Manufacturing Company*, Tr. 2881).

(e) That if forms of merchandising such as only the soap people "know how to employ" were used, he would be in trouble (*Jones—Jones Chemical Company*, Tr. 2955-6).

Even if these statements were taken at face value, there is nothing which would justify a conclusion that any "lessening of competition" would result. At most, these witnesses were voicing concern as to the impact of what they guessed might possibly be additional competition. It is common knowledge that any business man—or any professional man—always views with suspicious concern any change of any kind by a competitor.

Thus, we submit that a competitor's statement that it will be more difficult for him to compete establishes nothing in terms of a violation of Section 7. The antitrust laws are not designed to give any competitor a preferred or insured position in the market place.

This premise was aptly stated by the Examiner in ruling upon questions directed to the effect of competitive efforts in the business during the examination of Robert Prescott. He there stated (Tr. 2593-4):

> "HEARING EXAMINER HAYCRAFT: I understand your question was whether he had lost any business, any accounts. Of course, anybody that is familiar with business of this kind at all knows, yes, certainly, anybody, everybody is going to lose some business and pick up more.
>
> * * *
>
> "It is just like night follows day that anybody that is in this business, and the competitive forces playing, some are going to lose business, some are going to lose customers and others are going to pick them up and they are going to pick up some.

"That's what competition is. So what? That's a normal situation. Why go into it? I just don't think there is anything in this case, any of the issues in this case which would warrant that."

Moreover, although these five witnesses testified some months after the acquisition, no one of them stated that his business had been adversely affected, and such evidence as was introduced on the subject showed that the business of all of them had increased in the period prior to their testimony.

(6) *Riccardi—Roman Cleanser Co.* This witness refused to indulge in unfounded speculation as to any adverse effect of the acquisition. When asked as to the effect that the acquisition would have on his business, and testifying almost one year after the acquisition, he said: "Now I do not see any changes." (Tr. 3056). The witness was later asked: "What kind of change in the method of selling Clorox will it take to affect your business?" He answered: "I do not know." (Tr. 3057).

Here was a successful, established competitor with a net worth of approximately two million dollars (Tr. 3064). There is nothing in his testimony to support any claim that any anti-competitive results would occur. Moreover, although sales of the Roman Cleanser brand had decreased after the acquisition, the witness attributed such decline to unemployment in the Detroit area (Tr. 3065). Had he had any thought that the acquisition had contributed in any way to such decline, he certainly would have said so.

(7) *Mendleson—B. T. Babbitt, Inc.* We have previously commented on this testimony (see Note to Findings Nos. 64 and 195). The witness admitted that for a year prior to the acquisition his company had not promoted or advertised the Vano liquid bleach "since the franchise of Clorox was so strong." The so called "franchise", of course, referred solely to the

position of Clorox Chemical, *prior to the acquisition* and was in no way due to the acquisition.

Finally, any evaluation of the testimony of these witnesses must take into account what they did *not* say as to the effects of the acquisition. No one of them suggested that the acquisition would result in any predatory "price-cutting" such as was found to have resulted *from the acquisition* in *In the Matter of Reynolds Metals* or "vicious" pricing policies resulting in prices below competitors' costs (such as was involved in *In the Matter of Pillsbury*) or the giving of premiums to induce jobbers' salesmen to push a brand, or premiums to supermarkets to induce them to purchase a brand (practices adverted to in *In the Matter of Pillsbury*). Nor have any of such practices been shown to exist in the marketing of Clorox, and there is no proof of any probability that there will be any resort to them.

At the most, the concern expressed by representatives of these competitors related solely to surmises as to possible increased competition, stemming entirely from the use of admittedly proper competitive activities. As to all such activities, we again emphasize that the evidence demonstrates that Clorox Chemical Company, had there been no acquisition, was in a position where it could have undertaken all of them. Every aspect of advertising or promotion, about which any witnesses expressed "apprehension", could have been engaged in by Clorox Chemical without acquiring any additional financial assistance, or any additional advertising or promotional access, know-how or technique.

We have set forth this extended analysis of the testimony of these competitors in order to demonstrate that, even assuming the competency of such testimony, it has no controlling significance on the real issue

here. We have, of course, contended throughout this proceeding that opinion evidence of this sort is inadmissible. Regardless of how that question may be decided, we point to a statement by the Commission itself as to the inconclusiveness of this type of evidence. Referring to the weight to be attached to such opinion testimony, *even in preliminary investigations* conducted by the Commission, it has stated:

> "If a company representative is asked to go beyond facts of record and to give his opinion concerning the future consequences of an acquisition for his company, or for the market as a whole, the opinion can carry no greater weight than the facts on which it is based." *Federal Trade Commission Report on Corporate Mergers and Acquisitions*, p. 200 (1955).

Here the opinion testimony in question is based on sheer guesswork and speculation. In addition, the lack of factual substance is compounded by the failure of the witnesses to recognize that the future activities, as to which they expressed concern, all could have been engaged in had there been no acquisition. There is nothing in the record to support the conclusion that the acquisition, as such, would have any effect whatsoever upon future conduct.

Thus, we submit, the complainant's failure, in other respects, to establish that the acquisition will result in the probability of a lessening of competition or tendency to monopoly, has not been cured by the testimony of Clorox's competitors.]

VIII. The Acquisition Has Not Had and There Is No Reasonable Probability That It Will Have any Effect Upon the Market Position of Clorox Liquid Bleach.

A. Growth Trends in the Total Sales of Household Liquid Bleach.

Proposed Findings of Fact

182. The total sales of household liquid bleach in the United States through grocery stores have increased annually from August 1, 1953 to July 31, 1958 as follows: [1]

(1)	(2)	(3)	(4)
Year Ending July 31	*Total Dollar Sales (000)*	*Annual Dollar Sales Increase (000)*	*Percentage Increase*
1953	$ 71,571	—	
1954	75,087	$3,516	4.9%
1955	82,070	6,983	9.3%
1956	89,234	7,164	8.7%
1957	95,948	6,714	7.5%
1958	105,093	9,145	9.5%

Record support: [1] RX 94; also RX 93 and RX 117. The first two columns above are direct quotations from RX 94. The annual increase, column 3, is arrived at by subtraction. The percentage increase in column 4 is a matter of computation which has been checked and is corroborated by the third column of CX 683 as far as it applies to annual figures for the same periods.

RX 94 covers years ending July 31, which Nielsen period is as near as any other to the fiscal year of Clorox and of Purex. More important is the fact that July 31 coincides with the date of acquisition (August 1, 1957) and the annual anniversary date thereafter. This is the only Nielsen annual period which presents the annual situation after the acquisition and the annual situations before the acquisition. For this reason this period is used throughout the findings wherever available.

This evidence as to growth trends is in no way contradicted by certain data contained on CX 683 in which complainant attempts to compare total annual sales with sales for a four-month period (August-November, 1958). The invalidity of the comparison is apparent. It does not take into account seasonal and other factors in this particular period, which complainant's counsel conceded was part of the season during which bleach sales were at their lowest ebb (Tr. 4755-56). (Aiso see later discussion under Finding No. 185, Note, 3rd paragraph)

[Note: The foregoing figures and those appearing on succeeding pages with respect to household liquid bleach moving through grocery stores are based upon the Nielsen Food Index reports and exhibits prepared therefrom which were offered in evidence, the purpose and source of such evidence having been specifically stated. The accuracy of Nielsen figures was stipulated by both parties at the instance of complainant (Tr. 2066-A-2066-B).]

183. In the 12-month period following the acquisition, the growth in total sales of household liquid bleach in the United States was greater than the growth in each of the previous corresponding years. During this 12-month period, total sales increased by $9,145,000. Also, the rate of growth was higher in the year following the acquisition than in any of the preceding four years, and was 2 percentage points higher than the growth in the 12-month period immediately preceding the acquisition.

Record support: See preceding finding.

B. MARKET POSITION OF CLOROX LIQUID BLEACH BEFORE AND AFTER ACQUISITION.

184. The Clorox market share of the total sales of household liquid bleach in the United States, moving through grocery stores, in the year following the acquisition, as compared with such share in preceding years, was as follows: [1]

Year Ending July 31	*Clorox Share*	*Increase in Share*
1953	45.3%	—
1954	46.4%	1.1%
1955	47.1%	0.7%
1956	47.7%	0.6%
1957	48.4%	0.7%
1958	48.7%	0.3%

[Note: Paragraph 8 of the complaint alleges that in 1956 Clorox produced and sold approximately 48% of all household liquid bleaches marketed in the United States. Actually, for the 12-month period preceding the acquisition, the Clorox share was 48.4%, based upon the Nielsen consumer dollar figures, It is apparent that the percentages referred to in the complaint were on a consumer dollar basis, since on any other basis the allegation would be materially wrong. If the 32-ounce or other equivalent unit basis were used, the Clorox share of market would be less. For example, the Clorox share of market on a 32-ounce equivalent basis for the 12-month period following the acquisition was 45.8% and its share for October-November, 1958, the latest Nielsen tabulations available at the conclusion of the hearings, was also 45.8% (RX 113).

Hence, unless otherwise indicated, Nielsen's market share figures will be based on consumer dollars.]

Record support: RX 94.

185. The increase in Clorox's market share, i.e., 0.3% of one Nielsen point, was the lowest experienced by the product in any of the years from 1953 through 1958, was less than one-half the increase in the 12-month period immediately preceding the acquisition, and represented a decline in the rate of growth evidenced in all other preceding periods.

[Note: For the purpose of making market comparisons for comparable time periods Nielsen figures have been offered in various ways and for various periods of time.

Mr. Nickelson, whose qualifications as an expert to interpret such Nielsen figures were unchallenged, stated that annual figures are best for appraising trend of market. This is because annual figures erase seasonal influences (Tr. 5469-70). The Hearing Ex-

aminer has at least twice commented on the desirability of figures on an annual basis (Tr. 2047 and 4997). Complainant's witness, Mr. Stoneman, testified that a trend in a product cannot be established "in a period of 6 months, in one given year, in one segment of the territory" and that it is necessary to compare more than one comparable period (Tr. 5631-32).

During the case, the complainant, as well as the respondent, has objected to periods shorter than one year as, for example, periods of 4 months. The respondent brought out from the Nielsen figures, previously identified in a Stipulation entered into at the instance of the complainant (Tr. 2066A-B) the loss in the Clorox share of market during the 4-month period from August 1 to November 30, 1957 (RX 93). Whereupon, the complainant objected on the ground that the respondent was offering to show these 4 months in comparison with the preacquisition year ending July 31, 1957 (Tr. 4755-56).

In view of this objection and the discussion which followed, the respondent prepared and had identified RX 94 which places the comparison on a 12-month basis up to and after the date of acquisition. Later in the hearing the complainant sought to put in evidence figures from August 1 to November 30, 1958 (CX 683) which were, of course, subject to the same objection as the complainant had urged for the preceding year (Tr. 5832).

These individual short periods should not be considered as showing any definite trend of share of market. As indicated in many of the exhibits, market share of a brand fluctuates up and down dependent on price increases or decreases, bookkeeping, timing of advertising and special promotions and merchandising programs, etc. For example, the total February-March sales of liquid bleach from 1953 to 1958, were down from the preceding bi-monthly period in five

of the years and up in one and the percentage changes ranged from −3.2% to +.8% (CX 694).

For individual brands the variations are even more marked. For instance, in the case of Purex figures for 1958, shown on this same Exhibit, CX 694, in two of the six reporting periods, Purex sales were better proportionally than total sales throughout the United States. In one instance the changes in Purex sales and total sales were the same. In three the Purex brand sales were lower proportionately than total sales.

With the variations which occur for seasonal and other reasons in any given year, it is apparent that either party could select, from the wide range of figures in the record, one or two bi-monthly periods which would seem favorable to that particular party. However, this would establish nothing and any determination of trend should properly be on an annual basis related to a comparable period before and after the acquisition.]

186. In view of Clorox's market share at the time of the acquisition, its increase of 0.3% of one Nielsen point in the year following the acquisition is so small as to be almost *de minimis*. Furthermore, there is no proof that such increase, inconsequential as it is, came about because of, or was attributable to, the acquisition.

[Note: Compare *In the Matter of Pillsbury*, where the substantial increase in share and market position was directly attributable to the acquisition and to the elimination and absorption of an important competitor.

Elsewhere we have referred to the steady increases in Clorox market share in the years prior to the acquisition. In this setting we submit that, even if the increase in market share in the year subsequent to the acquisition had been much larger than it actually was, such fact in the light of the evidence in

this record, would in no way support any conclusion that such an increase in market share stemmed from or was attributable to the acquisition. There is nothing in this record to indicate that Clorox Chemical, operating entirely independently of Procter, would not have maintained its trend of growth in the liquid bleach business or even enhanced it.]

187. In line with the growth of total sales of liquid bleach in the United States and as indicated by the virtually unchanged market share of Clorox in the 12-month period after the acquisition, the total sales of Clorox through grocery stores increased from $46,470,000 to $51,183,000.[1]

[Note: As set forth in the table in Proposed Finding 178, the total sales of household liquid bleach increased $9,145,000 in the 12-month period after the acquisition over the preceding 12-month period. Clorox's total sales increased in roughly the same ratio as is indicated by the fact that its market share remains substantially the same. In other words, Clorox's increase in dollar sales simply reflects the maintenance of its prior position in the expanding liquid bleach business.]

Record support: [1] RX 94.

188. The market shares of Clorox, set forth in preceding Findings Nos. 184-186, reflect only its share of household liquid bleach moving through grocery stores. Such figures do not purport to reflect Clorox's market share of the household bleach industry as a whole, since they do not include dry bleach or house-to-house sales of liquid bleach or sales through outlets other than grocery stores. Hence, it is obvious that the Clorox market share of the total household bleach industry is less than shown in the Nielsen figures.

Proposed Findings of Fact

[Note: Complainant has urged in this proceeding that dry bleach is not properly a part of the line of commerce involved. It has ignored the potential competitive effect of dry bleach as a substitute for liquid bleach. Yet the advantages of dry bleach in terms of weight and handling, are such that it could seriously affect the public acceptance of liquid bleach and adversely affect the market shares of liquid bleach producers in the overall bleach industry.]

C. MARKET POSITION OF COMPETING BLEACH PRODUCERS BEFORE AND AFTER ACQUISITION.

1. *Market position of Purex*

189. Although Purex does not sell household liquid bleach throughout the United States, the Nielsen figures show the total sales of the Purex brand and the share of the total sales of liquid bleach throughout the United States represented by such brand. Such sales and shares for each of the years ending July 31, from 1953 through 1958, are as follows: [1]

Year Ending July 31	*Purex Dollar Sales (000)*	*Purex Brand Share of Market*	*Decline in Share*
1953	$12,706	17.7%	—
1954	12,633	16.8%	0.9%
1955	13,503	16.4%	0.4%
1956	14,566	16.3%	0.1%
1957	15,425	16.1%	0.2%
1958	16,688	15.9%	0.2%

Record support: [1] RX 117.

190. As indicated in the preceding Finding 189, the increase in the total dollar sales of Purex brand house-

hold liquid bleach in the 12-month period following the acquisition, over the preceding 12-month period, was $1,263,000.[1] As also indicated in the preceding finding, this was the largest increase in sales enjoyed by the Purex brand for any 12-month period from August 1, 1953 to July 31, 1958. In addition, this increase does not represent the total increase in the Purex liquid bleach business since it does not reflect the growing business of Purex Corporation, Ltd. in the private label field.

[Note: Even complainant's Exhibit 692 shows the same gain as shown in RX 117 and it also shows that for the 12 months after the acquisition, Purex brand sales were 8.2% above those in the 12-month period immediately prior to the acquisition.

It will also appear from RX 94, RX 117 and CX 692 that over the years prior to the acquisition, the Purex brand share of market had been declining in relation to the share for Clorox and that after the acquisition this decline was smaller than at any previous time. These figures show that the market share trend of the Purex brand as compared with Clorox was more favorable to Purex after the acquisition than it was before.]

Record support: [1] RX 120.

191. As also shown by figures in preceding Finding 189, the market share of the Purex brand had steadily declined in each of the 12-month periods prior to the acquisition. In the year immediately following the acquisition the decline in the Purex brand share was the same as in the year immediately preceding the acquisition (i.e. 0.2%), and except for the year ending July 31, 1956, was the smallest decline in market share since 1953.

[Note: The figures heretofore referred to do not, of course, take into account any increase in the Purex

market share resulting from its acquisition of Fleecy White or the increase in the Fleecy White market share in the 12-month period subsequent to the acquisition. There is evidence, however, that the combined market share of the Purex brand and Fleecy White was the same for the two-month reporting period immediately prior to the acquisition as it was for the last bi-monthly period for which figures were available at the close of the hearings (RX 119),]

192. While there are no figures in evidence from which the Purex brand share in its various areas of distribution can be compared with the Clorox share in such areas for annual periods antedating the acquisition, there is evidence as to the respective shares of such brands for the period from October-November, 1956 to October-November, 1958.[1] These figures show that as of October-November, 1958, the Purex brand share of household liquid bleach in such areas was 31.8% as compared to the Clorox share of 39.4%. The Purex market share figures, however, do not include the Purex company's sales of private label bleach. To the extent of such sales, the Nielsen figures necessarily understate Purex Corporation, Ltd.'s share of the entire household liquid bleach business.[2]

Record support: [1] CX 672. While the figures shown on CX 672 are too fragmentary to permit any conclusions as to trends in market shares, they do indicate that the respective shares of Purex and Clorox declined, while the shares of all other bleaches sold in the area increased.

[2] Nickelson (Tr. 4712-13). The Purex private label bleach figures were not introduced into evidence, and were not produced, although requested by respondent. It should also be noted that included within the Purex distribution area shown on CX 672 are marginal areas of distribution (Tr. 2000-1) where the share of Purex is necessarily less than in a fully-covered area. If an adjustment were made for such areas it would increase further the over-all Purex Corporation share of the market.

(record support continued next page)

Record support: [2] (continued)

In addition, sales of Fleecy White were not included in the market share reported for Purex. All of these factors taken together might well eliminate and would reduce any difference between the market share of Clorox and Purex Corporation in the Purex distribution territory. The complainant did not offer proof sufficient to show that there is any material difference between the share of market of the two companies in the territory which they both cover.

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193. The sales and market share of Purex brand of liquid bleach, as set forth in preceding Findings, were attained despite the fact that Purex Corporation, Ltd. was dividing its sales efforts in the bleach industry by reason of its exploitation and promotion of its dry bleach—Beads O'Bleach.[1]

[Note: The emphasis which Purex, Ltd. has placed upon the marketing of its dry bleach is illustrated by the cover page of its 1958 Annual Report (RX 114). This pictorially features Beads O'Bleach and no other product.]

Record support: [1] Stoneman, Tr. 1971.

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194. There is no proof that any changes in the sales or market share of the Purex brand liquid bleach, whether calculated in relation to total sales of liquid bleach throughout the United States, or sales in the various areas in which the Purex brand is distributed were caused or affected, or probably will be affected, by the acquisition.

2. *Market position of other competing bleach producers.*

195. Since no producers of household liquid bleach other than Clorox sell their products in all sections of the United States, the share of any such producer of the total sales of liquid bleach throughout the United States is unrealistic

as the basis of any comparison with the national market share of Clorox and cannot properly be used for such purpose. In addition, except in the case of Purex,[1] the complainant, which has the burden of proof, failed to offer any evidence which would permit a valid comparison of market shares between Clorox and any other liquid bleach producer in the entire area or areas in which such producer and Clorox compete.

Record support: [1] CX 672; see Proposed Finding 192.

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196. While the Nielsen figures contain no figures on an annual basis as to the volume of sales of individual producers (other than Clorox and Purex), such sales and share can be determined on a collective basis from the Nielsen figures.[1] Such figures show that the sales of liquid bleach producers other than Clorox and Purex for the 12-month period subsequent to the acquisition increased $3,169,000 over the preceding 12-month period.[2]

Record support: [1] The Nielsen figures respecting market shares of total sales of liquid bleach throughout the United States contain no breakdown of shares of individual bleach brands (other than Purex) which would permit any comparison with Clorox for the 12-month periods prior and subsequent to the acquisition.

[2] RX 94; RX 117. The increases in the dollar sales of Clorox and Purex have been deducted from the total dollar sales increase to arrive at the increase in sales of all bleaches other than those two brands.

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197. In the 12-month period subsequent to the acquisition, the collective market share of all producers of household liquid bleach (other than Clorox and Purex) was substantially identical with the market share of such producers in the 12 months prior to the acquisition. Such

market share declined 0.1% which is so small as to be *de minimis.*[1]

[Note: Since the combined all-other brands of liquid household bleaches, other than Clorox and Purex, virtually maintained their competitive position for the full year after the acquisition, it is obvious that they have been unaffected by any competitive pressure against them.]

Record support: [1] The decline of 0.1% is apparent from RX 94 and RX 117 which show that the Clorox share increased 0.3% and the Purex share declined 0.2%, thus necessarily indicating a decline of only 0.1% for all other producers.

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198. Even if the minute fractional decline in the collective market share of bleach brands, other than Clorox and Purex, had any significance, there is no evidence in this record from which the trend of market share of any particular brand in the United States can be computed for comparable 12-month periods.[1] The evidence shows that the number of brands of household liquid bleach for which share of market is specifically computed, varies with the different bi-monthly reporting periods of the Nielsen Food Index,[2] and a witness for the complainant testified that it was impossible to compute market shares for brands other than Clorox and Purex prior to April-May, 1957.[3]

Record support: [1] CX 672, applicable only to the Purex distribution area, shows figures for all other liquid bleach brands from and after October-November, 1956 and shows that the Nielsen percentage for this group for the last period is now higher than it has been at any time in past two years.

[2] CX 325, CX 334, CX 335 and RX 85. Nielsen Food Index reports sales of only those brands specifically ordered by a client (Tr. 4816-7). Whether or not a brand is audited and reported bears no relationship to the importance of such brand in its own marketing area.

[3] Smith, Tr. 5859-60. See Finding No. 201 *infra.*

199. Such Nielsen statistics as are contained in the record bearing upon the market share of any competitive brand of bleach reflect the regional characteristics of the industry and the varying market shares of liquid bleach producers from time to time.[1]

[Note: For example, in the Chicago Metropolitan area where Linco is the largest selling brand of liquid bleach (Tr. 2181), the Clorox share is very small; in the Pacific and Southwest territories where Purex competes with Clorox in the entire Nielsen reporting area, Purex is ahead of Clorox in one area and behind in the other; and in the New England territory where no competitor competes throughout the entire reporting area, Clorox has a higher share of market than the national average.

The varying share of market of any brand, including Clorox, for any particular period shows the lack of probative value in considering arbitrary beginning and closing periods for determining trend and the necessity for looking at periods in which seasonal fluctuations are eliminated. Depending on the selection of the area and the time period, almost any superficial conclusion can be reached. For example, CX 682 shows bi-monthly Nielsen reporting periods from December-January 1957 to October-November 1958 in the Nielsen reporting territories. In five of the territories, the Clorox share went up during this period; in three it went down; and in one it remained the same.]

Record support: [1] CX 682.

200. Both Nielsen statistics and the testimony of certain competing bleach producers, called as witnesses by the complainant, establish the significant position of their respective brands in the particular areas in which they

were engaged in business. For example, Linco sells approximately 45-50% of the liquid bleach marketed in the Chicago area.[1] Clo-White is the principal factor in Savannah.[2] Hilex is much stronger than Clorox in Minneapolis.[3] Roman Cleanser has the largest market share in Detroit.[4] In the entire Pacific territory, as reported by the Nielsen Food Index, Purex has a higher market share than Clorox.[5]

Record support:

[1] Hahn, Tr. 2181; Bellingall, Tr. 5180. In addition, Linco produces a substantial volume of private label bleach which, when included in its total sales, would materially increase the company's share of market (CX 464).

[2] Kunin, Tr. 2404.

[3] Bellingall, Tr. 5180.

[4] Riccardi, Tr. 3075-76.

[5] CX 681; CX 682. CX 695 was offered to show the Purex shares in three divisions of the Nielsen Pacific territory. In two of them Purex had a higher share than Clorox, in one of them Clorox had a higher share than Purex, but in the total area Purex had a higher share. For the last bimonthly reporting period, the Clorox share of market varied from 33.0% to 45.8%, and the Purex brand share varied from 26.8% to 55.1% (CX 695). This again demonstrates the highly competitive nature of the liquid bleach business on a local area basis.

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201. Although the competing bleach producers, called as witnesses by the complainant, testified some months after the acquisition, no witness testified that he had sustained any loss in sales or market position or customers as a result of the acquisition. Moreover, although the complainant had the burden of establishing any loss in sales by any competitive bleach producer, no Nielsen or other statistical evidence was introduced to show that in the 12-months period following the acquisition the sales of any such bleach producer had decreased in comparison with sales in a comparable period prior to the acquisition.

[Note: There are certain exhibits relating to less representative annual periods (e.g., CX 694) and permitting comparisons for less than a 12-months period (e.g., CX 693) but none of the figures on such exhibits either shows or indicates any decrease in the total liquid bleach sales for any liquid bleach producer during any period after the acquisition, except in the case of Roman Cleanser. In that situation, Mr. Riccardi testified that the depressed labor market in Detroit had affected the volume of his business (Tr. 3065). The Hearing Examiner may also take judicial notice (see, for example, TIME MAGAZINE, March 23, 1959, p. 19) that such depressed labor market still existed in the Roman Cleanser sales area as of that time.

There are also in the record exhibits prepared by bleach producer witnesses appearing for complainant which purport to show their sales figures (CX 443, 464, 472, 483, 491, 496, 503, 504, 510A-B, 519A-B, 530). Some of these exhibits purport to show net sales (e.g., CX 472-Hood Chemical Co.); some gross sales (e.g., CX 519-Roman Cleanser Co.); others, both net and gross sales (e.g., CX 510-Gardiner Manufacturing Company, Inc.); some include sales of private label bleach (e.g., CX 472-Hood Chemical Co.) and in other such sales were not included (e.g., CX 443-Purex Corporation, Ltd.); and one exhibit purporting to show sales figures actually represents a flat percentage of total sales of all products sold including non-bleach products (CX 483-Rose-lux Chemical Company, Inc., Tr. 2442).

None of these exhibits, however, shows sales figures beyond December, 1957, and even the figures shown are not broken down so that any reasonable comparison for like periods can be made of sales before and after the acquisition. Nonetheless, in every one of these instances the dollar sales figures submitted by these witnesses were higher in 1957 than in any preceding year shown.

No dollar sales figures for Vano liquid bleach were offered; however, the case sales for that brand were lower in 1957 than in 1956. This merely represented a continuation of the downward trend that began in 1952, and did not and could not have been caused by the acquisition (CX 530). The producer of Vano liquid bleach, Chemicals, Inc., was acquired by B. T. Babbitt, Inc. in 1956 (CX 535). The production and distribution of liquid bleach at the time of that acquisition was of such little importance or interest to B. T. Babbitt, Inc., that in the Annual Report for 1956, no mention was made of the fact that Chemicals, Inc. even manufactured liquid bleach, although the acquisition and other products acquired were fully discussed (CX 535).

The case sales for Sunlight Chemical Corp. in 1957 were lower than in 1952 and 1953 but were higher than those in 1954, 1955 and 1956 (CX 496). The witness for Sunlight explained that five years previously he had sold his private label business to Prescott (Tr. 2724).

Despite the fact that complainant did not close the case-in-chief until August, 1958 (Tr. 3839) and was permitted to present Nielsen figures for as late as October-November, 1958 (See, for example, Tr. 5661), more than a year after the acquisition, no evidence of sales of competing liquid bleach producers, except that relating to Purex and Roman Cleanser referred to previously, was offered which would permit a reasonable comparison of such sales before and after the acquisition. In the absence of any such evidence it must be assumed that the growth trend for the individual bleach producers continued after the acquisition.]

202. There was no testimony that any competing bleach producer had lost a single grocery store account since the acquisition.

[Note: The Hearing Examiner suggested that information as to this subject be elicited by complainant (Tr. 2593-94). Despite this suggestion, complainant did not interrogate any of its bleach producer witnesses concerning it. We submit that it can properly be assumed that had such questions been propounded, the answers would have been that no accounts had been lost.]

203. There is no proof that any change in the sales or market share of any competing bleach producer, whether calculated in relation to total sales of liquid bleach throughout the United States, or sales in the particular area in which it markets its bleach, was caused or affected or probably will be affected, by the acquisition.

204. In summary, if the effect of the acquisition on competition is to be determined by the probable consequences thereof with respect to the larger bleach producers,[1] the record shows that as to such producers, the dollar sales and market shares of none of them have been affected by the acquisition. In fact, Purex, the largest competitor of Clorox, enjoyed in the year following the acquisition the largest dollar increase in sales and, except for 1956, the smallest decline in market share since 1953.[2] With respect to other large bleach producers, they have, on the whole, enjoyed a substantial increase in dollar sales and no decline in market share.

Record support: [1] See, for example, the Hearing Examiner's remarks at Tr. 5683-4 and 5881-82.
[2] See Findings 189 through 191.

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205. If the criterion of legality is the effect of the acquisition on small as well as large bleach producers, the uncontradicted evidence shows that the dollar sales of "all

other" bleach producers (other than Clorox and Purex) has since the acquisition reached the highest level in history, and the collective market share of such producers in the year following the acquisition has remained constant.[1]

Record support: [1] See Findings 196, 197 and 202.

D. THERE IS NO PROOF OF THE PROBABILITY OF ANY MATERIAL CHANGE IN MARKET POSITIONS IN THE LIQUID BLEACH BUSINESS BY REASON OF THE ACQUISITION.

206. The Nielsen data which is in evidence establishes that the trends which were developing in the bleach industry were not reversed after the acquisition of Clorox Chemical by Procter. In fact, Nielsen data show a continuation of the expansion of the household liquid bleach market moving through grocery stores, with a competitive gain for Clorox for the year after the acquisition which was less than in any previous year for which records are available. Conversely, the competitive loss of the Purex brand together with the collective loss of all other brands was less in the 12-month period after the acquisition than for any 12-month period prior to the acquisition.

Furthermore, the uncontradicted testimony is that since the acquisition the management of Clorox has aggressively utilized all advertising, promotional and sales efforts which its management deemed necessary to promote and sell the Clorox brand.[1]

[Note: Any disregard of this evidence or of the objective statistical evidence would be to decide the issues here by clairvoyance and nothing else. We further submit that the significant statistics can not

Record support: [1] Trimpe, Tr. 4415; Bellingall, Tr. 5121-22. In addition, the undisputed testimony is that there has been no "holding back" in such activities since the acquisition.

be offset by the bare and unsupported guesses of a few of Clorox's competitors. (See Proposed Findings in Section VII *supra*).]

IX. Conclusions

207. Complainant has the burden of establishing by reliable, probative and substantial evidence, that the probable effect of the acquisition by Procter of Clorox Chemical may be substantially to lessen competition or to tend to create a monopoly. Complainant also has the burden of defining and proving the relevant line of commerce and the section of the country in which the acquisition would have the proscribed effects.

208. Prior to the acquisition Clorox Chemical had achieved a substantial position in the household liquid bleach industry and had, in each year from 1952 to the time of the acquisition, steadily increased its sales and improved its market share position. The preacquisition position of Clorox Chemical is immaterial in determining whether any lessening of competition or tendency to monopoly may result from the acquisition. The prohibited effects of Section 7 of the Clayton Act must be found to be reasonably probable because of and as a result of the acquisition.

209. Prior to the acquisition Procter did not compete in the household liquid bleach market nor is there any proof that it sold any products to or bought any products from any producer of household liquid bleach. Procter's acquisition of Clorox Chemical thus did not result in (1) the elimination in whole or in part of the competitive activity of an enterprise engaged in the production and sale of household liquid bleach, or (2) the establishment of any

relationship between the two companies which deprived any seller of a fair opportunity for sales to Clorox Chemical or Procter or which deprived any buyer of a fair opportunity to compete for any purchases from Clorox Chemical or Procter.

210. In the absence of proof that Clorox Chemical gained any substantial competitive advantage as a result of the acquisition, no lessening of competition nor tendency to create a monopoly can be ascribed to the size of Procter or its demonstrated ability in the production and marketing of household products other than household liquid bleach.

211. Plaintiff has failed to prove that the relevant line of commerce is the household liquid bleach industry as distinguished from the entire household bleach industry (liquid and dry). Complainant has failed to prove that the national market (i.e. the entire United States) is the proper relevant market in this proceeding. Complainant has also failed to prove the area or extent of or competitive conditions within any regional or local market in which the effect of the acquisition should be measured.

212. Even if it be assumed that the household liquid bleach industry is the relevant line of commerce and that the national market is the relevant market, complainant has failed to prove that there are any advantages or factors resulting from the acquisition which might, with reasonable probability, result in any lessening of competition or tendency to create a monopoly in the manufacture, distribution or marketing of household liquid bleach.

213. Complainant has failed to prove that the acquisition has had or that there is any reasonable probability that it will have any effect upon competitors or competition in the household liquid bleach industry.

Proposed Findings of Fact

214. The acquisition of Clorox Chemical by Procter does not violate the provisions of Section 7 of the Clayton Act and the complaint should be dismissed.

Respectfully submitted,

KENNETH C. ROYALL
RICHARD W. TODD
FREDERICK W. R. PRIDE
Attorneys for Respondent, The Procter & Gamble Company

JOSEPH C. DINSMORE
DINSMORE, SHOHL, DINSMORE & TODD
Union Central Building
Cincinnati 2, Ohio

ROBERT D. LARSEN
ROYALL, KOEGEL, HARRIS & CASKEY
1000 Vermont Avenue, N. W.
Washington 5, D. C.
Of Counsel

Dated: May 8, 1959

[Caption Omitted]

ORDER CLOSING CASE

(Filed June 17, 1960)

The reception of evidence in this matter having been concluded and all procedural steps having been complied with,

IT IS ORDERED that all proceedings before the Hearing Examiner in this matter be, and they hereby are, closed.

/s/ EVERETT F. HAYCRAFT
EVERETT F. HAYCRAFT,
Hearing Examiner.

June 17, 1960.

[Caption Omitted]

INITIAL DECISION

(Filed June 17, 1960)

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Initial Decision

[Caption Omitted]

INITIAL DECISION

(Filed June 17, 1960)

Everett F. Haycraft, Hearing Examiner.

William R. Tincher, Attorney for the Commission.
Richard W. Todd and Joseph C. Dinsmore of Dinsmore, Shohl, Dinsmore & Todd, Cincinnati, Ohio
Kenneth C. Royall, Frederick W. R. Pride and Robert D. Larsen of Royall, Koegel, Harris & Caskey, Washington, D. C.
Attorneys for the Respondent.

PRELIMINARY STATEMENT

A. THE PLEADINGS AND PROCEEDINGS.

The Commision, on September 30, 1957, issued a complaint against The Procter & Gamble Company, an Ohio corporation, sometimes hereinafter referred to as P & G, with its principal office and place of business located in Cincinnati, Ohio, charging it with violation of Section 7 of the Clayton Act, as amended December 29, 1950, through the acquisition on August 1, 1957, of the assets, trademarks, business and goodwill of the Clorox Chemical Company, a Delaware corporation, sometimes hereinafter referred to as Clorox Chemical, with its principal office and place of business located in Oakland, California.

Specifically, the complaint alleges that the effect of the acquisition of the assets and business of Clorox Chemical, "may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of household liquid bleaches in the United States and in each of them."

More specifically it is alleged that the effect of the acquisition was the actual or potential lessening of competition and a tendency to create a monopoly in the following ways, among others:

1. In the production and sale of household liquid bleach.

2. The elimination of Clorox Chemical as an independent, competitive factor in the household liquid bleach industry.

3. Household liquid bleach producers may be unable to compete with the respondent due to one or more of the following:

"a. Respondent's market position.
b. Respondent's financial and economic strength.
c. Respondent's advertising ability and experience.
d. Respondent's merchandising and promotional ability and experience.
e. Respondent's 'full line' of cleansing and laundry products.
f. Respondent's ability to command consumer acceptance of its products and of valuable grocery store shelf space.
g. Respondent's ability to concentrate on one of its products, or on one selected section of the country, the full impact of its advertising, promotional, and merchandising experience and ability."

4. Enhancement of respondent's competitive position in the production and sale of household liquid bleach to the detriment of actual and potential competition.

5. The industry-wide concentration of the production and sale of household liquid bleach may be increased.

6. The respondent is given the facilities, the market position and the "dominant ability" to monopolize, or tend to monopolize, the household liquid bleach market.

In its answer, filed November 4, 1957, respondent denied all charges of illegality contained in the complaint.

Preliminary Statement

The taking of evidence commenced in Cincinnati, Ohio, on December 16, 1957. Additional hearings were held in San Francisco, Los Angeles, Chicago, Philadelphia, New York, Boston, Buffalo, Detroit, and Washington, D. C., at which testimony was taken in support of the allegations of the complaint. Counsel in support of the complaint closed their case in chief on August 26, 1958.

Counsel for respondent presented evidence in opposition to the allegations of the complaint at hearings held in Washington, D. C., on November 17-26, 1958, and January 5-9, 1959.

Rebuttal testimony was received in Washington, D. C., commencing January 26, 1959. The hearings were concluded on February 12, 1959, when each party stipulated that its case was closed. Proposed findings were filed by the opposing parties in May 1959, and oral argument was held on June 16, 1959. Numerous briefs have been filed both before and after the oral argument, the last one having been filed in November 1959. The record consists of approximately 6,000 pages of transcript and several hundred exhibits, many of which consist of several pages.

B. STATEMENT OF THE ISSUES AND OPINION.

Section 7 of the Clayton Act, as amended December 29, 1950, provides in part as follows:

> "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of any such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

Preliminary Statement

The House Report accompanying the bill amending Section 7, as above, stated:

> "Under (Section 7) a merger or acquisition will be unlawful if it may have the effect of either (a) substantially lessening competition, or (b) tending to create a monopoly. These two tests of illegality are intended to be similar to those which the courts have applied in interpreting the same language as used in other sections of the Clayton Act. Thus, it would be unnecessary for the Government to speculate as to what is in the 'back of the minds' of those who promote a merger; or to prove that the acquiring firm had engaged in actions which are considered unethical or predatory; or to show that as a result of a merger the acquiring firm had already obtained such a degree of control that it possessed the power to destroy or exclude competitors or fix prices." [1]

It will be noted from the foregoing that among the first things to be determined in this case, and the necessary issues, are:

1. The Statutory "Line of Commerce" involved in the transaction.

2. The Statutory "Section of the Country" involved in the transaction.

3. The effect on competition in such "Line of Commerce" and/or such "Section of the Country".

   a. Does the acquisition tend to substantially lessen competition, or

   b. Tend to create a monopoly in the line of commerce or section of the country where the respondent and the acquired corporation are engaged in business.

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[1] H. R. Report No. 1191 of 81st Congress, 1st Session, Page 8.

Preliminary Statement

In the Senate report accompanying the amendment to Section 7 of the Clayton Act in 1950, the following language is found:

> "What constitutes a section (of the country) will vary with the *nature of the product.* * Owing to the difference in size and character of markets, it would be meaningless, from an economic point of view, to attempt to apply for all products a uniform definition of section, whether such a definition was based on miles, population, income, or any other unit of measurement. A section which would be economically significant for a heavy, durable product, such as large machine tools, might well be meaningless for a light product such as milk, and
>
> . . . "Hence, an acquisition is not to be interpreted merely in terms of either its effect on competition or its tendency to create a monopoly *'in the Nation as a whole'*. * The act is to be violated if, as a result of the acquisition, there would be a substantial lessening of competition or a tendency to create a monopoly in any section of the country." [1]

Another issue is whether or not the acquisition involved in this case, a so-called conglomerate merger, comes within the language of the statute, since there was no competition between P & G and Clorox Chemical prior to the acquisition. The House Report (supra) states as follows:

> "Because Section 7, as passed in 1914, prohibited, among other things, acquisitions which substantially lessened competition between the acquiring and acquired firms, it has been thought by some that this legislation applies only to the so-called horizontal mergers. But in the proposed bill, as has been pointed

[1] Senate Report 1775, 81st Congress, 2nd Session, Pages 5 and 6.
* Emphasis supplied.

> out above, the test of the effect on competition between the acquiring and the acquired firm has been eliminated. One reason for this action was to make it clear that this bill is not intended to prohibit all acquisitions among competitors. *But there is a second reason, which is to make it clear that the bill applies to all types of mergers and acquisitions, vertical and conglomerate as well as horizontal,* which have the specified effects of substantially lessening competition . . . or tending to create a monopoly." [2] *

Consideration has been given to the proposed findings and all the reliable probative and substantial evidence in the record upon all material issues of fact, law or discretion. Each of those proposed findings which has been accepted, has been, in substance, incorporated into this initial decision, All proposed findings not so incorporated are hereby rejected.

The examiner is of the opinion that the material allegations of the complaint have been proven by substantial and reliable evidence and that the Commission should take remedial action in the premises. Appropriate Findings as to the Facts, Conclusions and Order of Divestiture are hereinafter set forth.

FINDINGS AS TO THE FACTS

I. Description of the Respondent and the Industries In Which It Was Engaged In 1957.

Respondent P & G and various of its subsidiaries in 1957 were engaged principally in the manufacture and sale of soaps, synthetic detergents and cleansers. It also manufactured and sold some food products, including meat food products, paper products, shampoos, dentifrices and

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[2] Ibid, Page 11.

* Emphasis supplied.

home permanents. P & G was, and now is, the largest producer in the United States of soap and synthetic detergent products, and one of the major producers in its other principal product fields. The more important consumer household brands manufactured by P & G and its subsidiaries are sold to retail and wholesale grocery and drug outlets, department stores and variety stores. P & G was, and now is, one of the leading national advertisers in the United States and expends large sums of money in advertising and promoting many of its products in the household soap, detergent, food and toilet goods fields. P & G's overall expenditures for advertising in the United States of approximately thirty-five products manufactured by it and sold under its brand names were somewhat in excess of $79,000,000 for its fiscal year ended June 30, 1957.

As of June 30, 1957, P & G had total assets of $688,272,623 and total capital and retained earnings of $462,097,281. For the fiscal year 1957, consolidated net sales amounted to $1,156,389,726, and consolidated net earnings were $67,807,376.

As of June 30, 1958, P & G had total assets of $755,991,432 and total capital and retained earnings of $526,476,919. For the fiscal year 1958, consolidated net sales amounted to $1,295,163,269, and consolidated net earnings were $73,196,618.

Since 1946 P & G's net sales have increased more than 300%, and total assets have increased approximately 400%. A large percentage of this growth is attributable to the development of new products. For instance, it has developed and brought on the market a new detergent, a new deodorant toilet soap bar, two new brands of toothpaste, and an abrasive cleanser, all of which have proved very popular. P & G's president testified that approximately

70% of P & G's household product volume comes from products not in existence in 1946.

P & G has also grown by acquiring going businesses and, in so doing, entered new fields and diversified its operations. For instance, in August 1955 P & G acquired S. T. Young Foods, Incorporated, which manufactured peanut butter; in August 1956 P & G acquired the Duncan Hines prepared cake mixes from Nebraska Consolidated Mills, Incorporated, of Omaha; and in January 1957 it acquired Charmin Paper Mills, Incorporated, manufacturer of paper products.

The Duncan Hines and Charmin products were added to the P & G list of consumer brands during the fiscal year ended June 30, 1957. In P & G's annual report of 1957 the following statement appears:

> "Procter & Gamble's technical knowledge and manufacturing experience fit very well into the development and production of these types of products. In addition, both prepared mixes and paper tissue products are low priced, rapid turn-over, household items sold primarily through grocery, drug and department stores—the type of goods which the company is accustomed to market."

A further explanation is made of such acquisitions in the following language by the P & G Board Chairman:

> "Since our recent purchase of the Duncan Hines Cake Mix business, and our interest in the paper products field, it would be natural for any shareholder to ask, 'Why do we go into businesses like cake and other flour and shortening mixes, peanut butter and paper tissues?' Our answer would be simply that we feel *our experience and marketing skill* qualify us carefully to diversify our operations, and that by choosing

subsidiaries well and applying Procter & Gamble's merchandising methods to related consumer products businesses, we add to the stability and profits of the business." *

The Executive Vice President of P & G at the time of the acquisition of Clorox Chemical, in a press release, stated:

"While this a completely new business for us, taking us for the first time into the marketing of a household bleach and disinfectant, *we are thoroughly at home in the field of manufacturing and marekting low priced, rapid turn-over consumer products.*" *

II. THE CLOROX CHEMICAL COMPANY.

The Clorox Chemical Company was, prior to August 1, 1957, a Delaware Corporation, with its office and principal place of business in Oakland, California, and was engaged in the production and sale of 5¼% sodium hypochlorite liquid bleach and disinfectant under the trade name of "Clorox". At that time, and certainly since 1952, Clorox Chemical was the largest producer of household liquid bleach in the United States. It had thirteen plants for the manufacture and bottling of household liquid bleach, located at Atlanta, Georgia; Boston, Massachusetts; Camden, New Jersey; Charlotte, North Carolina; Chicago, Illinois; Cleveland, Ohio; Houston, Texas; Jersey City, New Jersey; Kansas City, Missouri; Los Angeles, California; Oakland, California; Seattle, Washington, and Tampa, Florida.

Net sales and net income of Clorox Chemical for the fiscal years ending June 30, 1952, through June 30, 1957, were as follows:

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* Emphasis supplied.

Net Sales		*Net Income*	
1952	$23,625,026	1952	$1,255,005
1953	$27,714,435	1953	$1,348,618
1954	$30,284,650	1954	$1,343,511
1955	$33,874,181	1955	$2,041,251
1956	$36,409,197	1956	$2,032,861
1957	$39,999,114	1957	$2,569,166

As of June 30, 1957, Clorox Chemical had total assets of $12,629,425 and an earned surplus of $7,127,015.

The foregoing net sales figures represent almost entirely sales of household liquid bleach which, with the exception of a small amount of industrial bleach, has always been Clorox Chemical's only product.

It will be seen from the foregoing table that the net sales of Clorox Chemical reflect a steady, continuous and substantial growth in each of the fiscal years from June 30, 1952, through June 30, 1957.

In each of the years during the period from August 1, 1952, through July 31, 1957, there was also a steady and continuous growth in Clorox Chemical's market share of all household liquid bleach sold in the United States through grocery stores. Such market shares were as follows:

Year Ending July 31	*Clorox Brand Share*
1953	45.3%
1954	46.4%
1955	47.1%
1956	47.7%
1957	48.4%

Clorox Chemical sold its product through approximately 80 distributors, acting as principals, to the grocery trade —shipments being made direct to the retail customer as

well as to the distributor, with the freight paid by Clorox Chemical.

Clorox Chemical's success in the household liquid bleach industry had been achieved through extensive national advertising which had made the name Clorox well known and accepted in American households as a quality product at a reasonable price.

The record indicates that Clorox Chemical was generally considered the price leader in the household liquid bleach industry. While a few brands, such as Purex, Linco, Prescott, 101, Hilex, and Roman Cleanser, sold at substantially the same premium price as Clorox, most of the brands manufactured by regional manufacturers sold for less than Clorox. Most private label and local brands generally sold for even lower prices. There is evidence that in a few isolated regional situations, certain competitive bleaches have been sold at a higher price than Clorox.

Clorox Chemical spent approximately $1,750,000 for newspaper advertising, $560,000 for magazine advertising, $1,150,000 for television, $113,000 for radio, and $145,000 for billboard advertising during the fiscal year ended June 30, 1957. It began to use TV spot advertising in July 1956, which was intended to add "extra impact to the tremendous selling support provided by Clorox national advertising."

During the period 1952 through July 31, 1957, Clorox Chemical had utilized no so-called consumer promotional devices or methods, such as the distribution of price-off coupons, free samples, premiums, contests or tie-in sales, although many of its competitors had utilized some or all of these devices.

Clorox Chemical commenced to use what is known as special spring and fall housecleaning campaigns in 1956. These campaigns were directed primarily to the grocer

and offered nothing special to the consumer. These campaigns lasted approximately six weeks, the spring campaign beginning in March, and the fall campaign in September. They were continued during 1957, the fall campaign being announced in a letter to the trade dated July 31, 1957, just prior to its acquisition by P & G.

III. THE ACQUISITION OF CLOROX CHEMICAL.

Respondent considered entering the household liquid bleach market by purchasing the Clorox Chemical Company approximately two years prior to the date of acquisition. In a confidential study of that market, by employees of respondent P & G in October, 1955, it was reported that liquid bleaches would continue to dominate the market volumewise since they were by far the most economical for the consumer to use. It was believed at that time that the household liquid bleach market would continue to grow for the following reasons:

"a. 75% of the homes now use a bleach.
b. Younger women bleach more than do older women.
c. Automatic washing machine homes use more bleach than do conventional washing machine homes."

It was estimated in this report that the total household liquid bleach market in 1955 amounted to about 44,000,000 (3-gallon case) cases, and the market was divided as follows:

"Clorox (National) 44%
Purex (Sectional) 16%
All others 40%"

This report, which was prepared by a man in the promotional department of respondent, recommended that the company should acquire the Clorox business rather than

try to enter the market by introducing a new brand, or by trying to expand a sectional brand. This was because it was felt that the latter course would require "a very heavy investment" to achieve a major volume in the field. It was recommended that:

> "taking over the Clorox business, however, could be a way of achieving a dominant position in the liquid bleach market quickly which would pay out reasonably well."

The report contained a history of the net sales and earnings of Clorox Chemical with the following comment:

> "We understand that Clorox sells through a broker-jobber setup, and that while they are #1 nationally, there are many important markets where their share of the bleach market is quite low. We feel that with our sales, distribution and manufacturing setup, we could effect a number of savings that could possibly increase the net profit of their business considerably—say to a net profit of $3,000,000 on net sales of $33,000,000."

In a later report by another member of the promotional department of respondent P & G, dated February 28, 1957, it was definitely recommended that P & G purchase the Clorox Chemical Company at a price of approximately $30,000,000 of P & G stock. Among the reasons for recommending the purchase were the following:

First, the total bleach market was then a *"large and expanding one."* Liquid bleaches account for approximately 95% of the total volume, and it was believed that the bleach market would continue to grow for the same reasons assigned in the previous 1955 report hereinbefore mentioned.

Findings As to the Facts

Second, Clorox was the nation's dominant bleach brand, with a total market share, reported by Neilson, in excess of 42%, or approximately half of the total household liquid bleach market.

Third, it was unlikely that the growth of dry bleaches would cut into the liquid bleach volume for many years to come.

Other factors taken into consideration were as follows:

> "We are advised that Clorox spent $2,660,000 in the last half of 1956 for advertising, or at the rate of $5,320,000 a year. We believe that *P & G advertising philosophies and economies* applied to an advertising expenditure of this size can be expected to further advance the Clorox business.*
>
> "It is conceivable that the profitability of the Clorox business may be improved. Recognizing that Procter & Gamble overhead charges, if applied to the Clorox P & L statement, might appear to reduce the profitability or at least to off-set any economies under P & G operation, there remains such possibilities as a 5¢ to 10¢ increase in the price per case (using Clorox 12 quart case as a base), which could conceivably be accomplished without an increase in the retail price, thereby expanding profit.
>
> "We may be able to derive additional value from the Clorox name for other new and related products, which may not perhaps be measurable in exact dollars, but should nevertheless be considered a value returned on the investment."

Pursuant to an agreement dated May 28, 1957, between Clorox Chemical and P & G, Clorox Chemical agreed to exchange and transfer substantially all of its assets and business as a going concern to P & G on the terms, conditions

* Emphasis supplied.

and provisions set forth in said agreement, which provided, among other things, that the closing of such exchange and transfer, subject to prior approval by Clorox Chemical stockholders, would be August 1, 1957.

To implement the transaction, P & G caused a wholly owned subsidiary named The Clorox Company to be incorporated under the laws of the State of Ohio. On August 1, 1957, this subsidiary, pursuant to the plan of reorganization set forth in the said agreement, exchanged 639,578 shares of P & G's fully paid and non-assessable two-dollar par value common stock (about 3.1% of the issued and outstanding stock) for substantially all of the assets and business of Clorox Chemical as a going concern. Clorox Chemical was then dissolved and the P & G stock received by it was distributed among Clorox Chemical's stockholders. The market value of the P & G stock exchanged was approximately $30,000,000.

IV. HOUSEHOLD LIQUID BLEACH IS THE LINE OF COMMERCE IN THIS PROCEEDING.

The product involved in this case is household liquid bleach, which quite uniformally consists of 5¼% sodium hypochlorite solution with 94¾% water. It is either manufactured from basic chemicals (chlorine and caustic soda) or it is converted by the producer from bleach concentrate by the addition of water.

Household liquid bleach is used by the housewife principally in the laundry as an adjunct to soaps and detergents to bleach cottons and fine fabrics. It is also used extensively as a germicide, to disinfect garbage cans, toilets, kitchen sinks, etc.

It is sold principally through grocery stores, in various sized glass containers, including pint, quart, half gallon and gallon bottles, packed in cases as follows: 24 pints,

12 quarts, 6 half gallons, and 4 gallons to a case, respectively.

It is contended by the respondent that the line of commerce involved in this proceeding should include dry bleach as well as liquid bleach, asserting that approximately 10% of the total household bleach market consists of dry bleach.

Dry bleach is not competitive with liquid bleach because, among other reasons, it has differing functional uses. Liquid bleaches are quicker and more thorough than dry bleaches, and they are considered more in the heavy duty category, while dry bleaches are in the light duty area. In addition, dry bleach is more expensive to use, is much less effective than liquid bleach for laundry purposes, and accounts for only about 5% of all laundry functions.

Clorox Chemical did not manufacture dry bleach, and the evidence indicates that dry bleach will never materially cut into the liquid bleach market, or ever replace liquid bleach in the home.

It is, therefore, found that the line of commerce in this case is household liquid bleach.

V. The Sections of the Country and Competitors in Each Section.

A. *The Sections of the Country Involved Herein.*

There is a national market for household liquid bleach in the sense that it is universally sold throughout the United States in grocery and drug stores. However, this national market is made up of a series of regional and local markets, the geographical confines of which cannot be fixed with any exactitude. There are in the household liquid bleach industry a substantial number of small producers which are located and sell in various local or regional areas. The weight of household liquid bleach, packed

in cases of glass containers for shipment, results in high freight costs, and necessarily restricts the region served by any one production facility. In the main, each producer markets its products in the region in which it has manufacturing facilities, and which it considers can be economically served by such facilities. In consequence, different competitive factors and conditions are to be found to some degree in each regional market.

Clorox Chemical was the only household liquid bleach manufacturer which sold its product throughout the United States. Purex Ltd., the second largest household liquid bleach producer, marketed its brand in areas of the United States containing approximately 48% of the population at the time of the acquisition of Clorox Chemical by P & G. In October 1958, Purex acquired the plants of John Buhl Products Company, a subsidiary of Sterling Drug, Inc., manufacturing and selling a brand of household liquid bleach known as "Fleecy-White", and, as a result, Purex now markets household liquid bleach in areas of the United States containing approximately 64% of the population. With the possible exception of one or two producers, all of the other members of the industry sold only in smaller regional or local areas.

In all but two of those regional areas, Clorox Chemical, prior to the acquisition by P & G, was a strong competitive factor. However, in two of the regional areas one of the competitive manufacturers occupied a market position comparable to that of Clorox Chemical in the sale of household liquid bleach.

B. *The Principal Competitors in each Section.*

There is some conflicting testimony as to the actual number of household liquid bleach manufacturers in the United States. It is estimated by the president of respond-

ent that there are between 100 and 200 such liquid bleach manufacturers. The president of Purex estimated there were approximately 40 to 50 such manufacturers who sell their products under their own label to grocery stores in competition with Clorox liquid bleach. The December 1955 edition of the Thomas Register of American Manufacturers contains the names of 20 companies known as liquid bleach manufacturers that were competitors of Clorox Chemical.

The following household liquid bleach manufacturers were the principal competitors of Clorox Chemical at the time of the acquisition:

1. *Purex Chemical Company*, hereinbefore mentioned, which had the largest distribution of household liquid bleach of any manufacturer except Clorox Chemical, sold its said product to customers in areas west of the Mississippi River and south of the Ohio River, plus portions of Wisconsin, Southern Illinois, and Southern Indiana. It did not sell in Pennsylvania, West Virginia, Virginia, the Carolinas, or Southern Florida. Since its acquisition of the John Buhl Products Company, it has added to its sales territory most of Virginia, West Virginia, Ohio, North Carolina, and parts of Michigan and Wisconsin.

2. *Roman Cleanser Company*, located in Detroit, Michigan, sold its household liquid bleach from its plants in Detroit; Griffin, Georgia; Tampa and Miami, Florida. Deliveries were made to customers located within a radius of about 150 miles of each plant. The territory generally covered by such sales are the States of Michigan, Ohio, part of Pennsylvania, parts of Indiana, Illinois, Georgia, Florida, and very little in Virginia and West Virginia.

3. *Linco Products Corporation*, sold its household liquid bleach principally to customers in and around the City of

Chicago where its factory is located. Its sales territory also included the States of Illinois, Indiana, Michigan, Wisconsin, and parts of Iowa and Ohio.

4. *The Hood Chemical Company*, with its principal place of business in Ardmore, Pennsylvania, sold its household liquid bleach produced at its plants in South Plainfield, New Jersey; Charlotte, North Carolina; Jacksonville, Florida; and Lisbon, Ohio, to customers in the sales areas surrounding the Cities of Philadelphia and Pittsburgh, Pennsylvania, the States of Florida, North Carolina, and South Carolina.

5. *Rose-Lux Chemical Company*, sold its household liquid bleach under the trade name or brand "Rose-X", manufactured in its factory located in Brooklyn, New York, to customers in the metropolitan area of New York City, including two counties in New Jersey, and one county in Connecticut.

6. *The J. L. Prescott Company*, with its factory located in Passaic, New Jersey, sold its "Dazzle" brand of household liquid bleach to customers in the States of Massachusetts, Connecticut, Rhode Island, and portions of Maine, New Hampshire, New Jersey, New York, Pennsylvania, and Maryland.

7. *The Savol Bleach Company*, from its factory in East Hartford, Connecticut, sold its household liquid bleach to customers located within a radius of 35 miles around Hartford.

8. *The Gardiner Manufacturing Company* sold its household liquid bleach "101" brand from its plant located in Buffalo, New York, to customers in western New York and western Pennsylvania, which included Erie and Bradford, Pennsylvania, Olean, Rochester, and Niagara Falls, New York, and points between those areas.

Findings As to the Facts

9. *The John Buhl Products Company*, hereinbefore mentioned, sold its "Fleecy-White" brand of household liquid bleach to customers in and around the City of Chicago, Illinois, where its factory was located, and in parts of Wisconsin, Michigan, Ohio, Iowa, Illinois, Indiana, West Virginia, Virginia, and North Carolina; and also in some portions of Kentucky, Tennessee, Alabama, Georgia, Texas, and Louisiana.

10. *Jones Chemicals, Incorporated*, sold its household liquid bleach under the trade name "Sunny Sol" from its factory in Caledonia, New York, to chain stores and jobbers in Utica, Binghamton, Norwich, and Albany, New York, and under the same trademark, it sold in bulk to franchised distributors in Buffalo, Rochester, Syracuse, Elmira, New York, and in Erie, Pennsylvania, who in turn sold to retailers in those areas.

11. *Lady's Choice Foods*, a corporation with plants located in San Francisco and Los Angeles, California, manufactured and sold household liquid bleach under the trade names "Saniclor" and "Hypro" to customers throughout the State of California, and portions of Arizona and Nevada.

12. *The No-Worry Chemical Company* manufactured a household liquid bleach at its factory in Newark, New Jersey, and sold it to customers in Essex and Hudson Counties, New Jersey, under the trade name "No Worry Bleach".

13. *B. T. Babbitt, Inc.*, whose principal household product is "Bab-O" also, since 1956 when it acquired Chemicals, Inc., manufactured household liquid bleach at its factory in Oakland, California, under the trade name "Vano", which it sold to customers in the immediate area around San Francisco and Oakland, California.

14. *The Hylex Liquid Bleach Company*, with its factory located in Minneapolis, Minnesota, sold household liquid bleach to customers in the States of Minnesota, North and South Dakota, and part of Colorado.

15. *The Texize Chemical Company* is listed in Dun & Bradstreet as a manufacturer of household bleach having a financial strength of more than $1,000,000. It is located in Greenville, South Carolina, and apparently sold its products in that general area, although the record does not contain detailed information with respect to the business of this company. It is of sufficient importance, however, that the Neilsen Food Index includes it in household liquid bleach market studies that have been made.

In addition to the foregoing-named manufacturers, the record contains evidence of another local company in New England, The Sunlight Chemical Corp., of East Providence, Rhode Island, engaged in the manufacture of a line of chemicals for household cleaning and laundry in the home, including a household liquid bleach.

From the foregoing facts, it is found that the sections of the country involved in this case are the United States as a whole, as well as those local and regional markets within the United States where Clorox is sold in substantial competition with one or more other household liquid bleach producers, and as recognized by the A. C. Nielsen Company Marketing Service to be as follows: New England, Metropolitan New York City, Middle Atlantic, East Central, Metropolitan Chicago, West Central, Southeast, Southwest, and Pacific.

VI. Clorox Chemical's Share of the Household Liquid Bleach Market in Each Section at the Time of the Acquisition.

Findings As to the Facts

The following table sets forth the market share of various brands of household liquid bleach, on a dollar basis, for the United States as a whole, and for certain regions such as New England, Metropolitan New York, Middle Atlantic, etc., as reported by the A. C. Nielsen Company in its bi-monthly report prepared for the Clorox Company, dated October 18, 1957, covering the two-month period June-July 1957.

It will be noted from the foregoing table that Clorox Chemical's sales during the period June-July 1957 represented 48.8% of the total sales of household liquid bleach in the United States. This same report from which the table was prepared shows that Clorox Chemical's nearest competitor, Purex Chemical Company, which ranked second in sales nationally with a market share of approximately 15.7%, sold less than one-third of the amount of household liquid bleach sold by Clorox Chemical during this period. The third largest seller of household liquid bleach was Roman Cleanser, which company's sales of this product, representing approximately 5.9% of the national market, was less than one-eighth of Clorox Chemical's sales during this period. The fourth largest distributor of household liquid bleach, in June and July 1957, was the John Buhl Products Company, hereinbefore mentioned, with its "Fleecy White" brand, the sales of which represented approximately 4% of the national market. The "Hilex" brand, with 3.3% of total sales, ranked fifth in market shares according to the Nielsen report. Two other companies whose brands of liquid bleach are not named in the report but are included in the "All Others" category are the Hood Chemical Company and the J. L. Prescott Co. each of whose sales of household liquid bleach for the year 1957 exceeded the sales of the Linco brand but were less than those of Roman Cleanser.

Section of the Country	Clorox	Purex	Fleecy White	Hilex	Linco	Roman Cleanser	Sani-Clor	Texize	All Others
United States	48.8[1]	15.7	4.0	3.3	2.1	5.9	0.8	0.5	18.9
New England	56.0	—[2]	—	—	—	—	—	—	44.0
Metropolitan, New York	64.3	—	—	—	—	—	—	—	35.7
Middle Atlantic	71.6	—	—	—	—	—	—	—	28.4
East Central	42.4	5.0	5.2	0.9	0.7	27.2	—	—	18.6
Metropolitan, Chicago	28.6	0.1	18.9	0.1	50.3	—	—	—	2.0
West Central	34.5	20.6	9.0	25.8	2.1	—	—	—	8.0
Southeast	52.6	16.0	5.7	—	—	5.3	—	3.1	17.3
Southwest	48.4	39.6	3.9	—	—	—	—	—	8.1
Pacific	39.2	42.4	—	—	—	—	6.0	—	12.4

[1] Percent of total sales, liquid bleach, on dollar basis. All dry bleaches have been computed out of the Universe for the purpose of this chart.
[2] No figure given if the brand listed is not sold in the area.
Source: Trend Table 4, page 77, CX 325. June-July, 1957, bi-monthly period.

VII. Some Household Liquid Bleach Manufacturers Sold a Portion of Their Output to Grocery Chains for Resale Under Private Brand Labels.

Respondent introduced into evidence a list of more than 200 private brand labels of household liquid bleaches being manufactured and sold.* It appears, however, that the household liquid bleach represented by these 200 odd private brand labels, was manufactured by only 54 manufacturers or suppliers. One label, that of Safeway Stores, represented a private brand manufactured by Safeway, and not by any other manufacturer. Of the 54 manufacturers, six have been mentioned hereinbefore as competitors of Clorox Chemical at the time of the acquisition.

The record indicates that certain of the testifying liquid bleach competitors of the respondent manufactured household liquid bleach for sale by others under private brand labels, in addition to manufacturing and selling bleach under their own brand names. Some of such competitors, and the number of private brand labels of household liquid bleach manufactured by them, for sale by others, were as follows: Purex—34; J. L. Prescott Company—41; and Hood—7. Other competitors, hereinbefore mentioned, which also manufacture private brand labels for sale by others are Lady's Choice Foods, Linco Products Corporation, and Roselux Chemical Company. The following named household liquid bleach producers apparently do not manufacture private brand labels: No-Worry Chemical Company; Sunlight Chemical Company; Savol Bleach Company; and Gardiner Manufacturing Company. The Jones Chemical Company began to sell household liquid bleach under a private brand label to a chain store in 1958.

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* Respondent's Exhibit 69A-Z.

Findings As to the Facts

The record does not contain any figures with respect to volume, but from the testimony of officials of these companies it appears that the Hood Chemical Company and the J. L. Prescott Company sold a substantial portion of their household liquid bleach to chain stores under private brand labels. The Linco Products Corporation sold about 12% of its volume to chain stores under private brand labels during the past few years, while the sales of household liquid bleach of other producers to the chain stores under private brand labels were *de minimis*. There is not sufficient evidence in the record to determine or find that the sale of private brand labels of household liquid bleach to grocery chain stores has increased since the year 1955.

Attention is also directed to the fact that, except for the Purex Company, the known manufacturers of private brand label liquid bleach for chain stores are not themselves important factors in the household liquid bleach industry, from the standpoint of their volume of sales. For instance, the combined total sales of such product by Hood Chemical and J. L. Prescott do not represent more than 5% of the industry. It also appears from the record that most of Hood Chemical Company sales of private brand label liquid bleach to chain stores was in the metropolitan New York area; the Linco Product Corporation in the Chicago metropolitan area; and most of J. L. Prescott Company's sales under private brand labels were in and around Boston, Massachusetts, and in the New York City metropolitan area.

There is in evidence, as Commission's Exhibit 645A-M, work sheets containing tabulations of replies and reports made by sales representatives of the Clorox Company, submitted in the fall of 1958, reporting on private brand labels encountered in their respective territories. These

reports were the basis of Respondent's Exhibit 69A-Z. An analysis of these reports on private label bleach shows that approximately 102 indicated that the sale of private labels had increased, and in 94 such reports it was indicated they had decreased, or that they were very poor; 25 indicated no change; 33 indicated that the percentage of such sales were negligible or of such a small percentage as to be *de minimis*; and 36 reports contained comments which were non-committal and could not be classified in the foregoing category.

Furthermore, it will be noted that in the table appearing on page 17 hereof, containing Neilsen data for the two-month period, June-July 1957, the respective percentages of sales by the different manufacturers do not include their sales of private label brands. However, such sales are included under the heading "All Others" which for those two months were less than 19% throughout the United States which, of course, would include, in addition to private label brands, all household liquid bleach sold throughout the country by all other manufacturers not listed in the table, including the J. L. Prescott Company and the Hood Chemical Company.

In view of the foregoing, it is found that the volume of sales of liquid bleach under private brand labels to grocery chains is not a substantial competitive factor in the household liquid bleach industry.

VIII. Respondent's Market Position in the Soap, Detergent, and Abrasive Cleanser Markets.

According to Nielsen Food Index reports, P & G is the leading producer in the United States of soap and synthetic detergents, and is one of the two leading producers of abrasive cleanser products. In 1957, P & G sales of packaged detergents in grocery stores was approximately

54.3% of total value on a consumer dollar basis, and 55% on a consumer unit basis, of the total national sales of such products. P & G consumer sales of toilet soaps in grocery stores in 1957 accounted for approximately 31.2% of total sales on a dollar basis and 37.3% on a unit basis of total national sales.

In the abrasive cleanser grocery store consumer sales market, sales of P & G's "Comet", on a dollar basis, represented approximately 36.5% of the national market in February and March 1958.

IX. P & G's Selling and Merchandising Methods.

A. *Method of Distribution.*

P & G sells all its products, except Clorox, through a subsidiary, Procter and Gamble Distributing Company, which has its own salesmen who call on wholesale jobber and retail outlets in the grocery, drug, department, and variety store fields.

The P & G sales force is divided into sales departments or divisions, each division selling a line of closely related products. For instance, the Case Soaps Sales Department sells all P & G packaged household soaps, cleansers, and synthetic detergents. The Case Food Sales Department sells P & G household edible products, including the acquired Duncan Hines and Big Top products. The Toilet Goods Sales Department sells the toiletries products manufactured by the Company, which includes shampoos, home permanents, and dentifrices. There is also a division which handles paper products.

P & G has approximately 1800 salesmen selling its products, and all of P & G sales personnel, practices and policies are under one man, the P & G Vice President of Sales.

Findings As to the Facts

B. *Shelf Space in Grocery Stores.*

The obtaining and retention of adequate shelf space in retail outlets, particularly in self-service grocery stores, is a fundamental objective of P & G salesmen. In January 1957 P & G inaugurated a "Chain Supermarket Retail Operation" devoted exclusively to shelf space. This program basically sought to realign soap, detergent and cleanser shelf space by grouping products into departments, and dividing said departments into proper classifications, alloting shelf space in ratio to sales movement.

There is an acute shortage of shelf space for all products, including respondent's, in the nation's grocery stores because of the greatly increased number and types of items carried by grocers in recent years. Adequate shelf space today is one of the things manufacturers compete for in grocery stores, especially in the larger supermarkets.

Each P & G salesman, in addition to selling his line of P & G products, is responsible for obtaining advertising and other merchandising support from his customers, and for obtaining retail store shelf and display space for P & G products.

According to the President of respondent: "It's one of the salesman's normal duties to make sure to try to secure adequate shelf space for our brands."

Shelf space is generally allocated by grocers on the basis of the sales movement of a product, and the reputation and merchandising ability of the manufacturer of the product. As one liquid bleach manufacturer witness testified:

> "Well, the allocation of shelf space in the grocery stores is controlled by competitive factors that were previously recited; the amount of advertising, the

amount of promotion, whether or not the product is being couponed or sampled; what sort of consumer promotion might be offered, how much sales help is offered the store manager in re-allocating or re-arranging shelf space, all these things have a factor in determining which product gets the maximum shelf space."

Another chain store grocer witness testified that in allocating shelf space the store owner takes into consideration such factors as advertising, promotion, and the character of the firm that is promoting the product so as to know whether or not it can carry out its promises.

C. *Advertising Programs.*

Sales movement of products, including respondents, in grocery stores is based primarily on the ability of the producer to advertise and promote its products. Grocers desire "pre-sold" products which they do not have to advertise or promote themselves. "P & G brands are pre-sold through extensive advertising."

A chain store grocer witness testified that consumer acceptance is obtained, "by consistent advertising, radio, television. You name it. They could have many other gimmicks that are paramount to the supermarket industry, not particularly as to bleach or soaps. There are just any number of items that would cause a product to move."

As hereinbefore indicated, P & G is one of the nation's largest advertisers, having spent at least $79,000,000 to advertise its products in the fiscal year ended June 30, 1957, and approximately $82,500,000 for that purpose during the calendar year 1957.

Its principal soap and detergent competitors, Colgate-Palmolive, and Lever Brothers, spent approximately $37,000,000, and $24,00,000, respectively, during 1957 on

national advertising. Purex, the principal competitor of respondent in the household liquid bleach business, spent approximately $3,000,000 in national advertising during the same year.

P & G uses television spot announcements extensively in advertising its products. In 1957 it ranked first in the nation as to amounts expended in this manner, having spent approximately $25,000,000 compared to approximately $8,000,000 expended by each of its principal competitors, Colgate-Palmolive and Lever Brothers for this type of advertising.

P & G also uses television programs extensively in advertising its products. It also ranked first in the nation in 1957 on amounts expended in this medium, having expended approximately $47,000,000. Colgate-Palmolive, its nearest competitor, spent approximately $19,000,000, and Lever Brothers spent approximately $16,000,000 for this type of advertising during this period.

The above amounts expended by P & G on television advertising alone indicate the advertising strength of the respondent.

P & G also utilizes radio, newspapers, and magazines extensively in advertising its products, and ranks high in the nation in the last two of these advertising media. It spent substantially more money in advertising in magazines in 1957 than any other detergent producer, and ranked fourth in the nation in magazine advertising.

Discount rates are available to large advertisers which can reduce their advertising cost by as much as 30% (or permit them to purchase substantially more advertising for the same amount of money expended). To earn these discounts, large advertisers may, as P & G does, combine their advertising on a given medium of all their products. This makes the pro-rata cost per product far less than the

amount required to be paid by the one-product company. Even a company with many products cannot earn discounts comparable to those of P & G if their combined amount of advertising is insufficient to qualify for a maximum discount.

D. *Sales Promotion Methods.*

In fiscal 1957 respondent P & G charged to profit and loss for sales promotion more than $47,000,000, which was approximately 5% of the amount of its net domestic sales. In conjunction with its advertising, P & G has promoted its household products by offering to the consumer such promotions as:

1. "Two-for-one" price sales.
2. Special packs wherein a small size is given free or at a reduced price with the purchase of the attached larger size or the entire pack price is reduced.
3. Free samples mailed or delivered to the consumer's residence.
4. Price-reducing coupons mailed to or delivered to the consumer's home, alone or packaged with free samples.
5. Reduced consumer prices on quantity purchases.
6. Free or reduced price merchandise premiums attached to the P & G product or to be sent for by the consumer.
7. Contests with cash and merchandise prizes for the consumer.
8. Cross-couponing of P & G products and of P & G and other nationally known related products in that a price-reducing coupon for one product will be packaged in another P & G product.
9. Combining several of its products in a joint promotion, utilizing combinations of promotions hereinbefore mentioned.
10. Combinations of promotions hereinbefore mentioned for a single product.

E. *P & G's "Comet" Advertising and Sales Promotion Campaign.*

An example of the effectiveness of P & G's advertising and sales promotion campaigns is found in the "very successful" introduction and customer acceptance of its household cleanser "Comet". In the spring of 1957 respondent P & G introduced nationally its "Comet" brand of abrasive cleanser containing a bleach, with a national advertising campaign, after test marketing in selected areas, utilizing radio, television, newspaper, and magazine advertising, coordinated with extensive consumer promotions. From sometime in 1956 through October 1957, over a period of not more than 22 months, P & G spent for the direct advertising and promotion of "Comet" approximately $7,200,000. Of this amount, approximately $4,400,000 was spent in the first ten months of 1957 alone on "Comet" advertising.

As a result of the foregoing campaign, "Comet", according to Neilsen Food Index, steadily and consistently increased its market share, until by the last bi-monthly period of record herein (February-March, 1958) it had attained 36.5% of the national market of all scouring cleansers sold in grocery stores, and was within .4% of tying "Ajax", the leader in this field, for the number one rank. This position was gained by P & G within a period of approximately 20 months, from August 1956 to March 1958.

X. CHANGES MADE BY P & G SUBSEQUENT TO THE ACQUISITION OF CLOROX CHEMICAL.

A. *As to Management Personnel of Clorox.*

At the time of the acquisition, respondent P & G took over active control of the Clorox Chemical Company and installed its own personnel in key and controlling policy

making positions. For example, Mr. Fred Brown, a veteran of 45 years with P & G, formerly in charge of all P & G domestic manufacturing, became Executive Vice President and General Manager of Clorox, reporting directly to Mr. Morgens, the President of both P & G and Clorox. Mr. Brown replaced the former President of Clorox Chemical, Mr. W. J. Roth, who was retained in a consulting capacity only.

P & G also transferred three other men of staff level at the time of acquisition to key positions with the Clorox Company. One, a marketing specialist with P & G who had been responsible for the promotion of several P & G brands, including "Tide", was made a marketing staff associate; another, a manufacturing specialist, became a manufacturing staff associate, reporting directly to Mr. Brown; and a third was placed in charge of Clorox's laboratory controls and the technical phases of its business. Also, in January 1958, a former P & G district manager of case soap sales was made Pacific Coast Division Sales Manager of the Clorox Company.

In view of P & G's wide and successful experience in marketing its products, its technical know-how, together with its financial resources, these changes in the management of Clorox will result in substantial advantages to P & G in the marketing of Clorox liquid bleach.

B. *As to Plant Operations.*

P & G closed down the Kansas City, Missouri, Clorox Chemical Company plant shortly after the acquisition, and is producing Clorox in a building on its own Kansas City, Kansas, property, with P & G personnel. This action was taken in the interest of economy. Rather than to have two plants manufacturing in the same area, it was decided to combine that production in one plant.

The Boston plant of Clorox Chemical was also closed down because it was thought that the Eastern territory could be supplied more economically from the Jersey City, New Jersey, Clorox plant.

C. *As to Sales Promotion Campaigns.*

Respondent P & G has added promotions to Clorox merchandising programs using price-off labels, free premiums, price-reducing coupons, and reduced-price premiums, coordinated with advertising in selling Clorox in selected areas and nationally.

Examples of such promotions include merchandise premiums and special Clorox labels, usually during spring and fall housecleaning drives. One such brochure urges merchant support and stresses the coordinated advertising support in the same manner as is done for other P & G products.

A premium offer of an ironing board cover was made in the southeastern United States in November 1957, in Erie, Pennsylvania, in January and February 1958, and in June 1958, in the southwestern Sales Division of P & G. A premium pack of a dishcloth attached to a bottle of Clorox was also used in Los Angeles in June 1958.

This change to consumer promotion was decided upon by The Clorox Company as early as October 7, 1957.

In the spring of 1958, in the so-called "Clorox Spring Housecleaning Bee", consumer promotions were featured, such as an ironing board cover for 50¢ and a Clorox label.

Also in June 1958, 5¢ price-off labels on gallons were used in metropolitan Chicago, which includes northern Illinois and a part of Wisconsin. Other price-off labels were used in Detroit, Nashville, Chattanooga, and San Francisco between February and July 1958.

Findings As to the Facts

Prior to the acquisition of Clorox Chemical by P & G, the former company had not utilized consumer promotions for a number of years.

The respondent contends (Page 91, paragraph 110, Respondent's Proposed Findings) that in the case of established products, such as Clorox liquid bleach, promotions may result in temporary gains in market share which, following the promotion, recede to their former level. However, the evidence in this case does not support this contention. In fact, in the only instance where evidence of probative value is available which relates the effect of a Clorox promotion directly to market share (Erie, Pa., area, CX450) Clorox's market share increased from 49% of the market during the period October 14 to November 11, 1957, (the period immediately preceding Clorox's "Money Saving Clorox Special" promotion advertised in the Erie, Pennsylvania, Times on November 25, 1957, and followed by other Clorox promotions in that area in January and February 1958) to 63% in the period December 12, 1957 to January 6, 1958.

Although Clorox's market share leveled off after these promotions to 52.9% of the Erie market during the period February 3-March 3, 1958, it retained a gain of almost 4 percentage points in market share in this area.

Even these statistics do not tell the whole story, for while Clorox was increasing its market share of liquid bleach in this area by almost 4 percentage points, the market share of one of its principal, but smaller competitors, Gardiner Manufacturing Company, with its 101 Brand, was decreasing from 25.2% to 22.3% of the market during this period, and "All Other" brands was decreasing from 18.9% to 17.7%.

Furthermore, if the respondent's contention is correct, that promotions result in only temporary gains in market

shares and then recede to their former level, it is inconceivable that Clorox would earmark $400,000 of its first advertising budget after the acquisition for such ineffective promotions.

D. *As to Advertising.*

1. In Magazines.

The Clorox Company, under P & G control, made a number of changes in the magazine advertising as used by Clorox Chemical Company, not only in the kind of magazines used, but in the type of ads appearing therein. For example, in February 1958, Clorox began the use of *monthly full page black and white ads* in some magazines in which Clorox Chemical had run *smaller color ads every other month.* Several magazines that had been used for advertising by Clorox Chemical were dropped entirely and the advertising in others, such as certain farm magazines, was reduced. These latter changes would appear to be consistent with P & G's general policy, as testified to by its advertising manager, of advertising in magazines with national circulation.

2. On Radio.

The Clorox Company, under control of respondent P & G, has doubled the amount of time purchased in television spot announcements of Clorox, compared to the record of Clorox Chemical, and placed less emphasis on radio in conformance with the P & G policy.

Also consistent with P & G policy, subsequent to the acquisition of Clorox Chemical Company, spot announcements on some independent, unaffiliated radio stations were terminated, and were switched to net-work stations which generally offered more listening audience. After the acquisition, 34 radio stations were dropped from Clorox

advertising, of which 27 were independent stations, unaffiliated with a net-work. One new station was added.

3. On Television.

Clorox has been advertised, since the acquisition, on spot television in new markets wherein the Clorox Chemical Company was not using spot television. Also, television spot advertising has been increased in other markets, wherein the Clorox Chemical Company had done very little television spot advertising.

While Clorox dropped or decreased TV spot advertising in a few markets, that had been used by Clorox Chemical Company prior to the acquisition by P & G, it added or increased its TV spot advertising after the acquisition in a substantially larger number of markets, either not used at all, or used to a more limited degree by Clorox Chemical Company.

The monthly average number of seconds of TV spot advertising used by Clorox Chemical Company in TV markets decreased or dropped by Clorox after the acquisition were 5,956.7, while such average used by Clorox in such markets after the acquisition was 3,597.5, or a decrease of only 2,359.2 seconds. On the other hand, the monthly average number of seconds of TV spot advertising used by Clorox in new or increased TV markets after the acquisition was 96,660 seconds, as compared to a monthly average of 43,277.4 seconds used by Clorox Chemical Company in such territory prior to the acquisition, or an increase of 53,382.6 seconds.

Thus, the total monthly average number of seconds of TV spot advertising used by Clorox Chemical Company before the acquisition, in both decreased and increased TV markets, was 49,234, whereas such average used by Clorox after the acquisition in such markets was 100,257,

or a net increase of 51,023 seconds. The following tables set forth in detail the monthly average, before and after the acquisition, in (1) New or Increased TV Markets, and (2) Decreased or Dropped TV Markets.

Table 1

(CX-545) New or Increased TV Markets After the Acquisition (Monthly average number of seconds)

	Monthly Average	
	Before	*After*
Abilene, Texas	0	1005.0
Albuquerque, N. M.	105.0	1560.0
Amarillo, Texas	0	1005.0
Ashville, N. C.	110.0	1552.5
Atlanta, Ga.	783.3	952.5
Austin, Texas	0	1012.5
Baltimore, Md.	1061.6	1150.0
Beaumont, Texas	0	1012.5
Birmingham, Ala.	1200.0	1795.0
Boston, Mass.	1200.0	1647.5
Buffalo, N. Y.	1041.7	1560.0
Charleston, S. C.	81.7	1217.5
Charlotte, N. C.	716.7	1045.0
Chattanooga, Tenn.	0	10.0
Chicago, Ill.	1991.7	2942.5
Cincinnati, Ohio	670.0	907.5
Cleveland, Ohio	1638.3	2820.0
Columbia, S. C.	375.0	1022.5
Columbus, Ohio	718.3	1207.5
Corpus Christi, Texas	0	1012.5
Dallas, Texas	68.3	2212.5
Davenport, Iowa	828.3	1560.0
Denver, Colo.	721.7	992.5
Des Moines, Iowa	785.0	952.5
Detroit, Mich.	933.4	1045.0
El Paso, Texas	185.0	2175.0
Erie, Pennsylvania	0	1695.0

Evansville, Ind.	0	1620.0
Fort Worth, Texas	0	435.0
Galveston, Texas	600.0	962.5
Greenville, N. C.	70.0	947.5
Harlingen, Texas	0	345.0
Houston, Texas	868.3	1122.5
Indianapolis, Ind.	978.3	1385.0
Jackson, Miss.	845.0	1297.5
Kansas City, Mo.	1700.0	2112.5
Los Angeles, Calif.	1218.3	2205.0
Louisville, Ky.	876.7	1890.0
Lubbock, Texas	1375.0	2602.5
Memphis, Tenn.	831.7	952.5
Miami, Fla.	506.7	987.5
Midland, Texas	0	577.5
Milwaukee, Wis.	0	977.5
New Orleans, La.	660.0	777.5
New York, N. Y.	1726.7	2105.0
Norfolk, Va.	371.7	432.5
Odessa, Texas	0	435.0
Oklahoma City, Okla.	1353.3	2400.0
Peoria, Ill.	800.0	952.5
Philadelphia, Pa.	1256.7	1382.5
Phoenix, Arizona	73.3	1040.0
Pittsburgh, Pa.	908.3	955.0
Portland, Ore.	1086.7	2282.5
Raleigh, N. C.	831.7	1290.0
Roanoke, Va.	71.7	1040.0
Rochester, N. Y.	868.3	2075.0
St. Louis, Mo.	793.3	1042.5
San Angelo, Texas	0	1005.0
San Antonio, Texas	91.7	1825.0
San Francisco, Calif.	1756.6	2027.5
Schenectady, N. Y.	46.7	585.0
Scranton, Pa.	68.3	1040.0
Seattle, Wash.	1191.7	1722.5
Shreveport, La.	68.3	1045.0
Syracuse, N. Y.	1633.3	1897.5
Tampa, Fla.	823.4	865.0

Temple, Texas	0	465.0
Tucson, Arizona	90.0	1297.5
Tulsa, Okla.	76.7	1360.0
Waco, Texas	0	570.0
Washington, D. C.	745.0	857.5
Wheeling, W. Va.	0	1005.0
Wichita, Kans.	799.0	1382.5
Wichita Falls, Texas	0	1005.0
Youngstown, Ohio	0	1005.0
Total	43,277.4	96,660.0
Increase		53,382.6
Decrease (See Table 2, p. 1)		2,359.2
Net Increase		51,023.4

Source: CX 545 A, B, C, D.

Table 2

(CX-545) TV Markets Decreased or Dropped After the Acquisition (Monthly average number of seconds)

	Monthly Average	
	Before	*After*
Bellingham, Wash.	1256.7	457.5
Huntington, W. Va.	150.0	0
Jacksonville, Fla.	1050.0	1040.0
Little Rock, Ark.	305.0	0
Omaha, Nebraska	431.7	320.0
Salt Lake City, Utah	1000.0	827.5
Spokane, Wash.	1288.3	952.5
Tacoma, Wash.	311.7	0
Wilmington, N. C.	163.3	0
Total	5956.7	3597.5
Decrease		2359.2
Monthly average number of seconds of TV spots in cities used by the Clorox Chemical Company and not used by the Clorox Company		930.0

Source: CX 545 A, B, C, D.

Findings As to the Facts

The number of cities used by Clorox Chemical Company for TV spot advertisements before the acquisition was 65, while the number of cities used for such purpose by Clorox after the acquisition was 80, an increase of 15 cities.

The monthly average number of seconds of TV spot advertisements used by Clorox after the acquisition, in cities not used at all by Clorox Chemical Company, was 16,197.5 seconds, while such monthly average of TV spots in cities used by Clorox Chemical Company before the acquisition, and not used by Clorox after the acquisition, was only 930 seconds. (See Tables 1 and 2 on the preceding pages).

The number of TV stations used by Clorox for TV spot advertising for the first time after the acquisition was the same as the number of TV stations dropped by Clorox after the acquisition, namely, 28. However, the total number of seconds used by Clorox for such advertising on the 28 new stations for the 8-month period, following the acquisition, August 1, 1957, through March 31, 1958 (157,000), was substantially more than the total number of seconds (104,080) used by Clorox Chemical Company for such advertising during the longer 12-month period, July 22, 1956 through July 31, 1957, on the 28 TV stations dropped by Clorox after the acquisition. (See Tables 3(a) and 3(b) on the following pages).

The Clorox Company used 129,580 seconds of TV spot advertising in 19 new cities during the 8-month period following the acquisition, August 1, 1957, through March 31, 1958, whereas Clorox Chemical Company used only 11,160 seconds of TV spot advertising during the 12-month period, July 22, 1956, through July 31, 1957, in 4 cities which were dropped by the Clorox Company after the acquisition. (See Tables 4(a) and 4(b) on the following pages).

Findings As to the Facts

A further indication of a more aggressive sales policy pursued by Clorox after the acquisition of Clorox Chemical Company by P & G is evidenced by the fact that, while Clorox Chemical Company used only 592,020 seconds of TV spot advertising in the 12-month period prior to the acquisition, Clorox purchased a total of 803,060 seconds of TV spot advertising in the shorter 8-month period immediately following the acquisition. (Source CX545A, B, C, D).

Table 3(a)

New Television Stations Used by The Clorox Company for Spot Advertising During the Period August 1, 1957 - March 31, 1958

Location	*TV Station Used*	*Total No. of Seconds During Period*
Abilene, Texas	KRBC TV	8,040
Amarillo, Texas	KFDA TV	3,480
Amarillo, Texas	KGNC TV	4,560
Austin, Texas	KTBC TV	8,100
Beaumont, Texas	KFDM TV	8,100
Chattanooga, Tennessee	WRGP TV	80
Corpus Christi, Texas	KRIS TV	8,100
El Paso, Texas	KROO TV	3,480
Erie, Pennsylvania	WICU TV	13,560
Evansville, Indiana	WFEI TV	12,960
Fort Worth, Texas	WBAP TV	3,480
Harlingen, Texas	KRGV TV	2,760
Los Angeles, California	KRCA TV	10,860
Los Angeles, California	KTTV TV	480
Miami, Florida	WCKT TV	2,640
Midland, Texas	KMID TV	4,620
Milwaukee, Wisconsin	WTMJ TV	7,820
Odessa, Texas	KOSA TV	3,480
Salt Lake City, Utah	KTVT TV	2,420

San Angelo, Texas	KCTV TV	8,040
Spokane, Washington	KHQ TV	4,200
Temple, Texas	KCEN TV	3,720
Waco, Texas	KWTX TV	4,560
Wheeling, West Virginia ..	KTRF TV	8,040
Wichita, Kansas	KAKE TV	3,840
Wichita Falls, Texas	KFDX TV	4,560
Wichita Falls, Texas	KSYD TV	8,480
Youngstown, Ohio	WFMJ TV	8,040
Total TV Spot Advertising on New Stations		157,500
Grand Total of Clorox Spot TV Advertising		803,060
Percent Accounted for by New Stations		19.6

Source: CX-545A, B, C, D.

Table 3(b)

TV Stations Used by The Clorox Chemical Co. for Spot Advertising During the Period July 22, 1956 - July 31, 1957, Dropped by The Clorox Co. August 1, 1957 - March 31, 1958

Location	*TV Station Used*	*Total No. of Seconds During Period*
Atlanta, Ga.	WSB-TV	3060
Birmingham, Ala.	WBRC-TV	13400
Chicago, Ill.	WBBM-TV	5820
Cleveland, Ohio	WEWS-TV	1200
" "	WJW-TV	5740
Columbus, Ohio	WBNS-TV	1780
Denver, Colo	KLZ-TV	3140
Huntington, W. Va.	WSAZ-TV	1800
Jackson, Miss.	WJTV-TV	1200
Little Rock, Ark.	KARK-TV	3660
Louisville, Ky.	WHAS-TV	300
New York, N. Y.	WCBS-TV	1080

Oklahoma City, Okla.	KWTV-TV	1440
Peoria, Ill.	WTVH-TV	260
Philadelphia, Pa.	WRCV-TV	6260
Portland, Ore.	KOIN-TV	9960
Raleigh, N. C.	WTVD-TV	1700
St. Louis, Mo.	KWK-TV	2020
San Francisco, Calif.	KGO-TV	40
" " "	KRON-TV	8880
Seattle, Wash.	KING-TV	1560
Spokane, Wash.	KXLY-TV	4300
Syracuse, N. Y.	WSRY-TV	7480
Tacoma, Wash.	KTNT-TV	3740
Tampa, Florida	WTVT-TV	4340
Washington, D. C.	WTOP-TV	4980
Wichita, Kans.	KTVH-TV	2980
Wilmington, N. C.	WMFD-TV	1960
(28 stations dropped)		
Total TV Spot Advertising on Stations Dropped		104,080
Grand Total of Clorox Chemical Co. Spot TV Advertising		592,020
Percent accounted for by stations dropped ...		17.6

Source: CX-545A, B, C, D.

TABLE 4(a)

New Cities in which The Clorox Company Used Spot Television Advertising During the Period August 1, 1957 - March 31, 1958

Location	*TV Station used*	*Total No. of Seconds During Period*
Amarillo, Texas	KGNC	4,560
Amarillo, Texas	KFDA TV	3,480
Abilene, Texas	KRBC TV	8,040
Austin, Texas	KTBC TV	8,100
Beaumont, Texas	KFDM TV	8,100

Chattanooga, Tennessee ..	WRGP	TV	80
Corpus Christi, Texas	KRIS	TV	8,100
Erie, Pennsylvania	WICU	TV	13,560
Evansville, Indiana	WFEI	TV	12,960
Fort Worth, Texas	WBAP	TV	3,480
Harlingen, Texas	KRGV	TV	2,760
Midland, Texas	KMID	TV	4,620
Milwaukee, Wisconsin	WTMJ	TV	7,820
Odessa, Texas	KOSA	TV	3,480
San Angelo, Texas	KCTV	TV	8,040
Temple, Texas	KCEN	TV	3,720
Waco, Texas	KWTX	TV	4,560
Wheeling, West Virginia ..	WTRF	TV	8,040
Wichita Falls, Texas	KFDX	TV	4,560
Wichita Falls, Texas	KSYD	TV	3,480
Youngstown, Ohio	WFMJ	TV	8,040
Total TV Spot Advertising in New Cities			129,580
Grand Total of Clorox Spot TV Advertising			803,060
Percent Accounted for by New Cities			16.1

Source: CX 545A, B, C, D.

Table 4(b)

Cities in which the Clorox Chemical Company Used Spot Television Advertising During July 20, 1956 - July 31, 1957, and were dropped by The Clorox Co., August 1, 1957 - March 31, 1958

Location	*TV Station Used*	*Total No. of Seconds During Period*
Huntington, W. Va.	WSAZ-TV	1800
Little Rock, Ark.	KARK-TV	3660
Tacoma, Wash.	KTNT-TV	3740
Wilmington, N. C.	WMFD-TV	1960

Total TV spot advertising in cities dropped	11,160
Grand total of Clorox Chemical Co. spot TV advertising	592,020
Percent accounted for by cities dropped	1.9

Source: CX-545A, B, C, D.

4. Savings in Advertising Expenditures.

Although the record indicates, as contended by respondent, that the per case rate expenditure for advertising and promotion budgeted by Clorox Chemical in the fiscal year ended June 30, 1957, and by the Clorox Company in the 12-month period ended June 30, 1958, were approximately the same, namely 16.4¢ per case, it appears that under P & G control an estimated savings accrued to Clorox during the latter period in its advertising expenditure as a result of the joint purchase by P & G and Clorox of advertising in the following media, and in the amounts shown:

Television	$ 86,000.00
Radio	500.00
Magazines	50,000.00
Newspapers	2,000.00
Total Savings	$138,500.00

In addition, there is evidence which indicates that, if Clorox's advertising was fully coordinated with the advertising of P & G, even more substantial discount savings could be effected, which would enable Clorox to purchase considerably more advertising without increasing its per case rate budget for such purpose.

In an industry where all but a few of Clorox's competitors are small firms with limited financial resources, any such

an amount of potential additional advertising cannot be considered insignificant.

That respondent P & G expected to accomplish such savings is indicated in a P & G confidential inter-office memorandum, dated February 28, 1957, recommending the purchase of Clorox Chemical by P & G, where the following statement is made:

> "We are advised that Clorox spent $2,660,000 in the last half of 1956 for advertising, or at the rate of $5,320,000 a year. We believe that *P & G advertising philosophies and economies* applied to an advertising expenditure of this size can be expected to further advance the Clorox business." *

XI. EFFORTS OF CLOROX UNDER P & G OWNERSHIP AND CONTROL TO PREVENT A COMPETITOR FROM ENTERING OR EXPANDING IN THE LIQUID BLEACH MARKET.

1. *In Erie County, Pennsylvania.*

Prior to October 1957, as hereinbefore indicated, Clorox's market share of the household liquid bleach market in Erie, Pennsylvania was more than 50% of the total sales in that area, and the other principal brand of household liquid bleach sold in that market was the 101 Brand, manufactured by the Gardiner Manufacturing Company, which brand enjoyed approximately 30% of the market at that time. On or about October 14, 1957, the Purex Company began a market test in that area by offering a new energized household liquid bleach in a new improved type of container and handle, with a new label attached. A special advertising campaign was put on, and promotional allowances were made to the dealer to enable him to sell the product at a lower price to the public. Coupons were

* Underscoring supplied.

widely distributed in the Erie area, entitling the housewives to a reduction of from 10¢ to 25¢ on the purchase of new Purex depending upon the size of the container.

Clorox, under the control of respondent P & G, combined an advertising and promotion campaign to prevent the Purex entry into the Erie, Pennsylvania, market. The first step was an advertisement placed in an Erie, Pennsylvania, newspaper on November 25, 1957, described as "Money Saving Clorox Special", and showing Clorox cents-off labels of 7¢ off on gallons, 5¢ off on half-gallons, and 3¢ off on quarts, and emphasizing the fact that the offer was available only in Erie County. Another premium offer was made in January 1958. This was followed, in February 1958, with a "Big Bargain Offer in Erie County" of a regular $1 ironing board cover for 50¢ with each purchase of Clorox. A special newspaper advertisement, featuring the ironing board cover offer, was scheduled to run in the Erie Times-News on February 20 and 21, 1958, and distributors in Cleveland were furnished quantities of display material to be sent to and used by the dealers in the Erie County area. In addition to the ironing board cover promotion advertisement, to be run on February 20 and 21, a second advertisement appeared in the Erie Times-News on February 27 and 28, 1958, and the dealers were furnished copies of a full-page Clorox advertisement carrying its selling message in the February issues of Good Housekeeping, Better Homes and Gardens, Ladies' Home Journal, and Parent's magazines; also a stepped-up schedule of Clorox television advertising in Erie County supplied additional selling support during the month of February. In addition, reprints of the two Clorox newspaper ads and the magazine ads were sent in quantities to the distributors for mailing to the dealers, along with the bulletins in use at that time by the distributors.

Clorox continued to run these promotions in the Erie market until the end of March 1958. From October 1957, to March 31, 1958, Clorox spent more than $4,000 for TV spots, and $2,400 for newspaper advertisements in the Erie County promotion campaign, although TV spot had never before been used by the Clorox Company to advertise in that area.

As a result of this campaign conducted by Clorox under P & G control, Clorox was successful in nullifying Purex's test market attempt and in preventing Purex from becoming a substantial factor in the Erie County market. Although Purex was able to nearly equal Clorox in its share of the market of household liquid bleach in the Erie area in the period November 11 to December 9, 1957, Clorox was able to regain and even increase its market position in that area by the first of March 1958, at which time the Purex share had been reduced to approximately 7%.

As a final result, according to an official of the Purex Company, the market test that was run in Erie, Pennsylvania, was cancelled out because the Purex market share did not remain at a reasonably good level. He stated: "It is not possible to do the piece of research that we anticipated, and get meaningful results."

An indirect result of the failure to successfully test the market in Erie, Pennsylvania, according to this official of the Purex Company, was the purchase by Purex of the John Buhl Products Company brand of household liquid bleach, "Fleecy-White". When asked for the reasons for the purchase of the John Buhl Products Company, this Purex official stated:

> "One was that Purex had been unsuccessful in expanding its market position geographically on Purex liquid bleach. The economics of the bleach business,

and the strong competitive factors, as illustrated by our experience in Erie, Pennsylvania, made it impossible, in our judgment, for us to expand our market on liquid bleach. Fleecy-White represented a brand that sold in fair volume in a limited geographical area, and this area represented an expansion of our geographical area."

2. *In Evansville, Indiana.*

The Purex Company also attempted a market test in Evansville, Indiana, at about the same time that it conducted the test in Erie, Pennsylvania. There was the difference that Purex had been selling its product in the Evansville market prior to October 1957, and no price-off coupons were used by it in the test. All that Purex did in the Evansville market, apparently, was to step up their advertising, featuring the newly designed bottle and label. However, Clorox countered by using price-off labels of 2¢, 4¢ and 6¢ in the Evansville market during the time Purex was attempting to test the market in that area.

3. *In Other Markets.*

At the times the Purex Company introduced its newly designed bottle and handle in other trade areas throughout the country, Clorox systematically countered with such "promotional devices" as price-off labels, coupons on the bottle, newspaper coupons, merchandising packs, and self-liquidating premiums, which were generally offered for periods of four or five weeks at a time. These promotions were put on in different local and regional areas throughout the country, the majority of which were utilized from May through August 1958, in the following recorded market areas: Atlanta, Georgia; Los Angeles and San Francisco, California; Chattanooga and Nashville, Tennessee;

and the Pacific Northwest. In fact, Mr. Eric Bellingall, Vice President of the Advertising Agency handling the Clorox account testified that: "We drew up a list and had ready a group of these promotions and we got a list of dates when Purex was moving across with its (new) bottle."

When questioned about such promotions, Mr. Bellingall further testified as follows:

> "Your Honor, you generally don't wait in most instances to let him get too much of an inroad. Now, we had this research of promotions that I had discussed and as Trimpe reported that the new bottle had shown up in this territory, and so forth, we would then move to counter with one of this pool of things.
>
> We have used as different devices, price off labels, the coupon on the bottle, the newspaper coupon, and so on, and in some territories, we did not meet it with a promotion, but tried to meet it with whatever increase there was in an advertising schedule.
>
> . . . "Sometimes we won't wait for the full effect of the competitor's promotion to take place with the consumer, that is, if he moves with a promotion, we may elect to move simultaneously or as close to simultaneously as we can. In other instances, and this can depend on holidays and so forth, we wait until we get a better reaction from our distributors in the area, and then try to go in to prevent the second purchase. Am I clear there, where a promotion might do a sampling job for the competitor and we would move against the time that we would judge that the woman would be going back for a second bottle. We don't want her to be setting up a habit of purchasing the thing that she has been temporarily attracted to by a promotion, so there is a variety of timings in this activity."

XII. SUBSEQUENT TO THE ACQUISITION BY P & G ON AUGUST 1, 1957, CLOROX'S MARKET SHARE OF THE TOTAL HOUSEHOLD LIQUID BLEACH SALES (ON A QUART EQUIVALENT BASIS) HAS INCREASED SUBSTANTIALLY.

The following table of comparable bi-monthly periods, before and after P & G acquired Clorox, prepared from the Neilsen reports, shows that for the months of August-September 1956, Clorox's market share, on a quart equivalent basis, was 44.9%; in August-September, 45.5%; and in the same months of 1958, 46.5%. Also, it shows that whereas the sales in October-November 1957, declined .1% from the same month's sales in 1956, the sales for the same two months in 1958 showed an increase of .6% over the October-November 1957, sales. Comparison of the spring months of April-May 1957, prior to the acquisition, with the corresponding spring months in 1958, shows an increase of .8%; and finally, comparison of the summer months of June-July 1957, also prior to the acquisition, with the same months in 1958, a year after the acquisition, shows an increase of 1.2%.

Comparable Bi-Monthly Periods Before and After P & G Acquiried Clorox (on a Quart Equivalent Basis)

CLOROX MARKET SHARE

	1956	1957	1958
Aug.-Sept.	44.9%	45.5%	46.5%
Oct.-Nov.	45.3	45.2	45.8
Dec.-Jan.	45.4	45.5	...
Feb.-Mar.	...	45.7	45.7
Apr.-May	...	44.9	45.7
June-July	...	45.7	46.9

The following table, also prepared from the Neilsen reports, makes the same comparison on a consumer dollar

basis and shows an increase from August-September of 1956 to the same period in 1957 of .4%, and in August-September 1958, an increase of 1.1% over the same months in 1957. Making a similar comparison in the months of October-November, it shows a decrease of .4% in 1957 over 1956, and an increase of 1.1% in 1958 over 1957. Comparing the spring months of April-May 1957 with the same spring months in 1958, this table shows an increase of .8%; and comparing the summer months of June-July of these same two years, an increase of .8% is shown.

Comparable Bi-Monthly Periods Before and After P & G Acquired Clorox (on a Consumer Dollar Basis)

CLOROX MARKET SHARE

	1956	1957	1958
Aug.-Sept.	48.0%	48.4%	49.5%
Oct.-Nov.	48.6	48.2	49.3
Dec.-Jan.	48.4	48.5	...
Feb.-Mar.	...	48.8	48.5
Apr.-May	...	48.0	48.8
June-July	...	48.8	49.6

XIII. THE CLOROX PROMOTIONS IN 1958 RESULTED IN AN INCREASE OF CLOROX SHARE OF MARKET AND DECLINE IN PUREX SHARE.

As hereinbefore indicated, Clorox ran its counter promotions against Purex in Erie County, Pennsylvania, and Evansville, Indiana, when the latter company attempted to test market both of those territories, from approximately October 14, 1957 to March 31, 1958.

However, the "great majority" of Clorox's counter promotions aimed at Purex ran in May, June and July 1958, in other markets, as hereinbefore indicated. The following table, from Neilsen reports, shows the market shares of

household liquid bleach sales (on a unit basis), in Purex's liquid bleach distribution area, in the bi-monthly periods immediately preceding and during such last mentioned Clorox promotions.

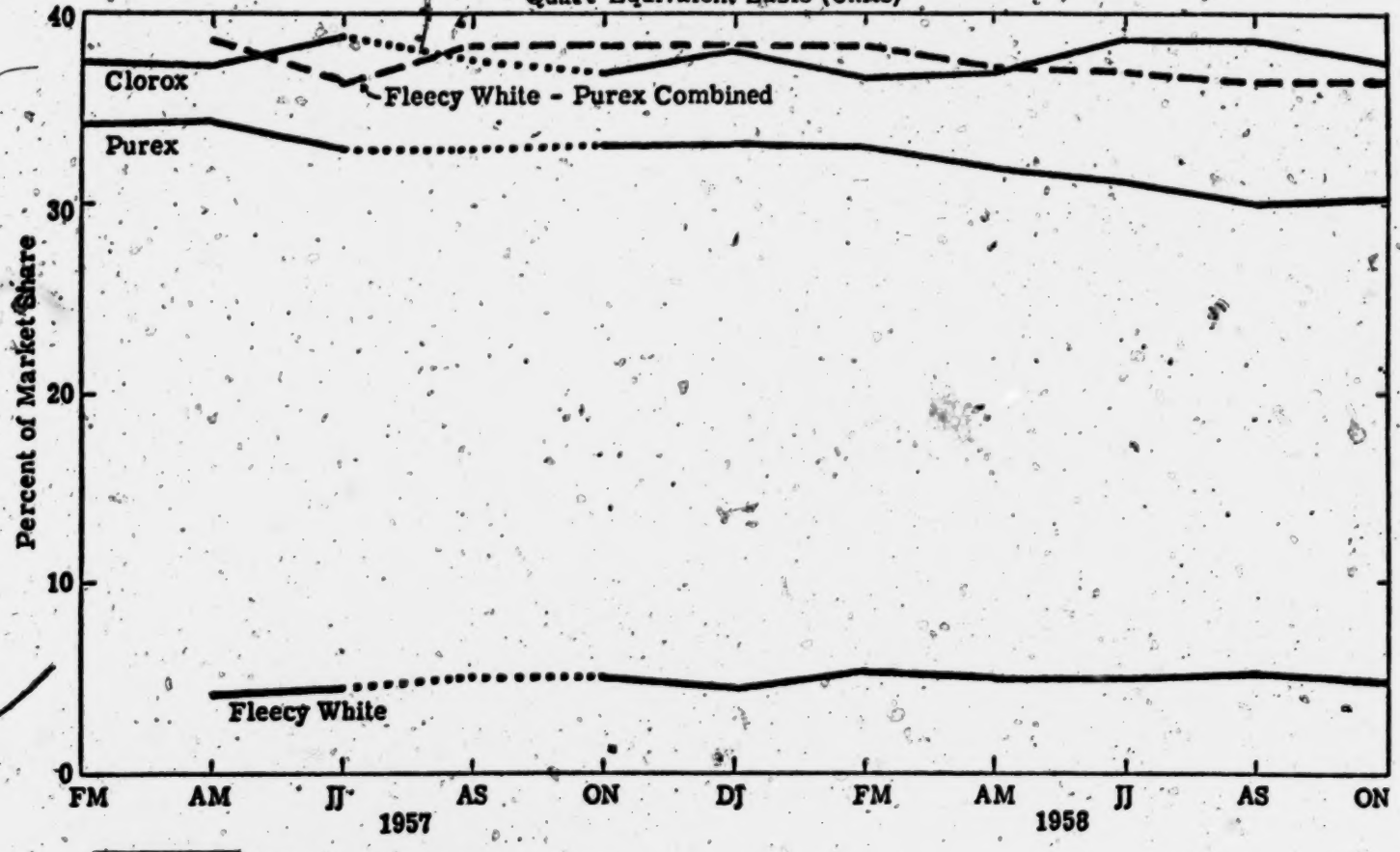
	Clorox	*Purex*	*All Others*
February-March 1958	39.1%	33.8%	27.1%
April-May "	39.5%	32.3%	28.2%
June-July "	41.1%	31.7%	27.2%

Source: CX 672 (unit basis).

The above table shows that from the period immediately preceding these last mentioned Clorox promotions to the end of July 1958, Purex lost 2.1%, Clorox gained 2.0%, and "All Others" gained 0.1% of their market shares.

The respondent submitted a tabulation of household liquid bleach bi-monthly sales in the Nielsen Pacific, Southwest, and West Central Territories combined, for the period June-July 1957, through October-November 1957, on a unit basis. (RX 91). This tabulation shows that during this period Clorox's share of the market in those areas declined until Purex and Fleecy-White's combined share was larger than that of Clorox. However, the abnormality of that selected period is evident from the following chart, showing for the same territories the percent of market shares of Clorox, Purex and Fleecy-White on a bi-monthly basis, from February-March 1957, through October-November 1958, the lastest available data of record. The dotted line portion of this graph shows the period included in respondent's exhibit (RX 91) referred to above. It is evident from this graph that not only did Clorox catch up and pass Purex and Fleecy-White combined by April 1958, but that the Purex share of the market declined below what it was prior to P & G's acquisition of Clorox in August 1957. (RX 91 and CX 668).

A. C. NIELSEN CO.
PACIFIC, SOUTHWEST, WEST CENTRAL REGIONS COMBINED
MARKET SHARES
Quart Equivalent Basis (Units)



Note: Dotted lines refer to data from RX 91.
Source: Commission Exhibit 668.

Findings As to the Facts

XIV. THE EFFECT OF THE ACQUISITION OF CLOROX CHEMICAL BY THE RESPONDENT P & G MAY BE TO SUPPRESS THE COMPETITION OF NOT ONLY PUREX BUT OTHER SMALL COMPETITORS.

A. *As to the Purex Company.*

According to the testimony of the President of the Purex Company:

> "The acquisition of Clorox by Procter & Gamble, in our opinion, will have a serious effect upon Purex's business and Purex's ability to compete in the liquid bleach business, particularly if the same promotion devices which are normally used by Procter & Gamble are applied to the liquid bleach business."

B. *As to the Linco Products Corporation.*

As hereinbefore indicated, this Company is respondent's principal local competitor in the Chicago, Illinois, territory. The President of that company testified with respect to the effect upon his business of the acquisition of Clorox Chemical by respondent P & G:

> "Well, I would say that this acquisition would create a situation where Linco Company will have a hard time to compete. When you stop to look at the resources that they have and the type of promotion that they put up when they buy or put out a new item, you can see that things are very serious. When they start a saturating campaign—that means radio, newspaper, TV, plus sampling, coupons, all that put together, including floor displays in the stores, which they would be able to get following all its advertising; and not only that, but they would be able to get probably more shelf space than competition, and all that together would eliminate the small manfacturer like us."

C. *As to the Rose-Lux Chemical Company.*

An official of the Rose-Lux Chemical Company, manufacturer of "Rose-X Bleach" brand of household liquid bleach, when asked what effect the acquisition by P & G of Clorox Chemical will have upon his company, testified:

> "Well, it's bound to hurt our business and it's bound to decrease our sales."

D. *As to the J. L. Prescott Company.*

An official of the J. L. Prescott Company, manufacturer of the "Dazzle" brand of household liquid bleach, hereinbefore mentioned, when asked what effect, in his opinion, the acquisition of Clorox Chemical by P & G would have upon his business, testified:

> "Well, it is our feeling that if approximately the same promotions are continued that the Clorox Chemical Company used, and in addition to that, things such as coupons, so much off on the label, that type of promotion added to it would definitely be harmful to our business."

E. *As to the Sunlight Chemical Corporation.*

The President of the Sunlight Chemical Corporation of Rumford, Rhode Island, when asked what some of the competitive factors are which determine whether or not his company sells household liquid bleach, testified:

> "I think our main competitor selling liquid bleach is the amount of money that our competitors have to spend for advertising. I do not think it is the product itself of our competitors that we fear as competition because all good brands of bleach are, chemically speaking, identical. They bear a different trade name. It is the ability of the larger companies to spend tremendous amounts of money in advertising that gets.

them the business instead of the smaller company like ourselves."

When asked specifically what effect the acquisition of Clorox Chemical by P & G would have on his business, he testified:

"—I still think it would be more difficult for us to sell with a stronger competitor. It seems to me that is only logical. The stronger your competitor, the more resourceful, the more experienced, the more money he has, the more business he should get, and less we should get.

"So I say almost unqualifiedly that we will suffer by this taking over of Clorox by Procter & Gamble."

F. *As to the Savol Company.*

A partner of the Savol Chemical Company of Hartford, Connecticut, hereinbefore mentioned, when asked what effect the acquisition of Clorox Chemical by respondent P & G would have on his business, testified:

"Frankly, we have learned to live with Clorox. As an individual I am a little bit apprehensive if Procter & Gamble goes on with the method of advertising, method of sampling, method of coupons, and the method of sales that they have used with Procter & Gamble products, both to the wholesaler and to the individual stores, of what they may do to the bleach business.

"Again, I am speaking as an individual. We have a little business. We are trying to get along. We are not trying to coop in or take in the entire world. We are making a living. If and when the advertising, if Procter & Gamble would go out with advertising such as they have with other of their products, it would take very little to put us out of business because there

isn't enough of a spread or a profit that we are making.

"And that is the thing that troubles me a little bit, and I can't help but be a bit apprehensive of it."

G. *As to the Gardiner Manufacturing Company.*

The President of the Gardiner Manufacturing Company of Buffalo, New York, hereinbefore mentioned, testified that he generally followed the Clorox price structure in selling to the trade, and when asked what effect the acquisition of Clorox Chemical by P & G would have upon his business, testified as follows:

"Well, I am scared of it, definitely, because of their larger capacity, purchase, advertising matter—makes it that they can cover the trade at a much lower cost than I can. They have a much larger sales force, which is selling their other products, which can also promote the Clorox. The entire business really scares us because of the possibilities of what could happen."

H. *As to Jones Chemicals, Inc.*

The President of Jones Chemicals, Inc., of Caledonia, N. Y., hereinbefore mentioned, when asked what effect, if any, the acquisition of Clorox Chemical by P & G would have upon his business, testified:

"If Clorox—runs along the way they have been running, in the experience that I have had with them for 27 years, then I feel that my company or any of our associates could meet them in the market place and operate satisfactorily as we have in the past. If they become a more aggressive merchandiser, getting away from the newspaper technique of influencing sales through newspaper advertising and go to the

more, you might say, dynamic form of merchandising such as only soap people know how to employ, then people like myself would be in trouble."

I. *As to B. T. Babbitt Company.*

The B. T. Babbitt Company had long been a competitor of P & G in the detergent and cleanser field. As hereinbefore indicated, it acquired Chemicals, Inc., in August 1956, which manufactured a household liquid bleach which it sold under the brand name "Vano" in and around San Francisco, California. The Babbitt Company continued to manufacture and sell this product until about April 1958, when it decided to discontinue manufacturing its household liquid bleach.

The Chairman of the Board and Treasurer of this company testified that his firm had a policy since approximately 1953 not to compete unnecessarily with the "soapers", referring to soap manufacturers. When asked what effect, if any, the acquisition of Clorox Chemical by P & G would have on the Vano liquid bleach business, he testified:

> "From this point on, it isn't going to have any effect, because several months ago we decided to discontinue manufacturing the product."

Since the witness was testifying in June 1958, it is apparent that the decision to discontinue the manufacture was shortly prior to that date, or about April 1958. He further testified that:

> "We acquired the Vano Liquid Bleach in August of 1956 and have not promoted the product or advertised the product since the franchise of Clorox was so strong, so I feel that one of the contributing factors

to our decision to discontinue the product was the acquisition of Clorox by Procter & Gamble, since it was obvious that we would not, under these conditions, entertain any thought of establishing a satisfactory franchise on Vano Liquid Bleach."

XV. THE ADDITION OF CLOROX TO THE P & G LINE OF SOAPS, DETERGENTS, AND CLEANSERS WILL ADD MERCHANDISING STRENGTH AND SUPPORT TO CLOROX WHICH WAS NOT AVAILABLE TO THE CLOROX CHEMICAL COMPANY.

There is an abundance of evidence in this case that there is a definite relationship between soap products, detergents, household cleansers and household liquid bleach, such as Clorox. This is apparent from their very nature, the uses to which they are placed by the housewife, and the way in which they are placed, grouped and displayed on the shelves of the grocery stores, and the promotional effort that is put behind those items. As pointed out by an official of one of the Clorox competitors:

> "The multi-product manufacturer can maintain stronger sales reports at the retail level. This is an aid in getting shelf space. The multi-product manufacturer normally has lower sales cost, so he has more promotion power; this is an aid in getting shelf space. The more products a manufacturer in our general commodity class sells to the grocery store at a profitable volume, of course, the more power he has to promote, and all these things are aids in getting shelf space."

Another competitor testified that household liquid bleach is very definitely adaptable to the promotional techniques used by soap companies. He pointed out that household liquid bleach is used by 95% of the housewives in the

United States, and that when such an item is so universally used, it is very adaptable to merchandising techniques.

XVI. THE INDUSTRY-WIDE CONCENTRATION OF THE PRODUCTION AND SALE OF HOUSEHOLD LIQUID BLEACH MAY BE INCREASED.

While the acquisition of Clorox Chemical by P & G in and of itself did not immediately result in increased industry-wide concentration in the production and sale of household liquid bleach, the record indicates that the results flowing from the acquisition already have resulted in some increased concentration and may well, in time, result in even more increased concentration in the production and sale of household liquid bleach.

For example, as a result of Purex's unfortunate experience at the hands of Clorox, when it attempted to test market its improved bleach and container in Erie, Pennsylvania, and Evansville, Indiana, Purex decided that its only opportunity to increase its sales and expand its territory was through acquisition, and it therefore acquired the Fleecy-White brand of household liquid bleach, thus increasing the concentration in that industry.

Another example is the decision of the B. T. Babbitt Company to discontinue the sale of its Vano brand of household liquid bleach, as a result of the acquisition of Clorox Chemical by P & G.

In addition, it would appear reasonable to expect P & G, with its financial resources available for the advertising and promotion of Clorox at any time and any place, and to the extent it may deem desirable, together with its admitted managerial, advertising and promotional expertise, to continue to increase the Clorox share of the market at the expense of its smaller and less resourceful competitors.

CONCLUSIONS

The acquisition in this proceeding presents a novel question, one that has never been passed upon by either the Federal Trade Commission or the courts in a formal proceeding. It is what might be called a conglomerate type of acquisition, or merger, in that the Clorox Chemical Company, the acquired corporation, was engaged in the sale and distribution of household liquid bleach, a product which respondent Procter & Gamble, the acquiring corporation, had never manufactured or sold. This product, however, is distributed to the public mainly through grocery stores and is used principally in the home as an adjunct to laundry soaps, detergents, and abrasive cleansers, and thus might be considered complementary to such products, which are the principal products manufactured and sold by respondent.

To determine whether this acquisiton is in violation of Section 7 of the Clayton Act, as amended, attention must be given to that industry in which the acquired corporation was engaged, and an attempt made to evaluate the impact on competition in that industry growing out of the acquisition. In order to do that, it is necessary to take into consideration the size and experience of the acquiring corporation in the conduct of its business prior to the acquisition, the manufacture and sale of products sold by it over the past few years, and then to make an evaluation of what the normal result probably will be when a corporation such as Procter & Gamble, the acquiring corporation, enters into the other industry, and utilizes the same methods of operation that it utilized in its prior fields of endeavor.

Following this pattern, or approach to the problem in this case, we find that the respondent herein is, and has been for a number of years, a financially powerful and aggres-

sive commercial organization which depends on advertising and sales promotion practices and methods described in the above findings, through which, and by which, it has succeeded in becoming the largest manufacturer and distributor of soaps and detergents in the United States, and a leading manufacturer of other household products such as abrasive cleansers. The respondent is recognized as one of the largest, if not the largest, advertiser, that is, it has spent more money in recent years in advertising its products than any other industrial organization in the United States, with the possible exception of one other corporation. In addition to its national advertising campaigns, it has effectively engaged in aggressive competitive sales promotion programs, few of which had been used by the acquired corporation, Clorox Chemical, the leader in the household liquid bleach industry, prior to the acquisition, although some competitors of Clorox Chemical had used some of such programs.

From the foregoing Findings as to the Facts, therefore, it is concluded that as hereinbefore indicated, the line of commerce in this case is household liquid bleach; the sections of the country involved are the entire United States and the nine sections, or regions, described above. It is also concluded that one of the results of the acquisition of Clorox Chemical by the respondent, P & G, probably will be the substantial lessening of competition between the respondent-owned Clorox and the smaller manufacturers and distributors of household liquid bleach, in the United States, and the definite tendency to create a monopoly in the respondent P & G in the household bleach industry, based on one or more of the following factors:

A. The dominant market position in the household liquid bleach industry held by Clorox, which it, under control of the respondent, has been able to increase as a result of the

acquisition and the various advertising campaigns, sales promotion programs and devices engaged in since the acquisition.

B. Respondent's financial and economic strength and advertising and promotional experience as compared with its competitors in the household liquid bleach industry.

C. Respondent's ability to command consumer acceptance of its products and to acquire and retain valuable shelf space in independent and chain grocery stores as a result of its advertising and promotional experience and financial resources.

D. The competitive position or share of market enjoyed by Clorox, under respondent's control, in the production and sale of household liquid bleach has been enhanced to the detriment of actual and potential competition. It can fairly be anticipated that, if Clorox, a wholly owned subsidiary of respondent P & G, continues its present methods of promotion and advertising, its dominant competitive position will be further enhanced.

E. The increasing tendency of concentration of competitors in the household liquid bleach industry.

F. The ability of Clorox, through its aggressive P & G inspired advertising and sales promotion methods and devices, to prevent the entry of additional competitors into the household liquid bleach industry, and to prevent the competitors it already has from expanding by normal methods of competition.

G. Furthermore, according to the testimony of officials of competing manufacturers and distributors of household liquid bleach, there is at the present time an apparently well-founded fear on their part that the aggressive advertising and sales promotion methods of respondent P & G used by Clorox in the household liquid bleach industry will result in serious injury to their business. As hereinbefore

mentioned, the record indicates that it was not the policy of the Clorox Chemical Company, the acquired corporation, to meet the sales promotions or test marketing of its smaller competitors with aggressive counter-promotions and retaliatory tactics. It had attained its leading position in the household liquid bleach industry mainly by national advertising. However, the evidence indicates that it has been the policy of Clorox, since its acquisition by P & G, to meet, and meet vigorously, the promotions and test marketing of its competitors. As hereinbefore related, these retaliatory tactics have been used especially against Purex, the second largest household liquid bleach manufacturer in the industry.

In view of the facts set forth in the aforesaid Findings, and these Conclusions, and in the light of the avowed purpose of the amendment to Section 7 to protect small units in an industry, it is held that the acquisition of the Clorox Chemical Company by respondent The Procter & Gamble Company is a violation of Section 7 of the Clayton Act, as amended December 29, 1950, and an order of divestiture should be entered to restore, insofar as possible, the competitive situation in the household liquid bleach industry existing prior to the acquisition.

The foregoing legal conclusion is supported by the House Committee Report: [1]

> "If for example, one or a number of raw material producers purchases firms in a fabricating field (i.e. a 'forward vertical' acquisition), and if as a result thereof competition in that fabricating field is substantially lessened in any section of the country, the law would be violated, even though there did not exist any competition between the acquiring (raw material) and the acquired fabricating firms.

[1] H.R. Rep. 1191, 81st Cong., 1st Sess., p. 11 (1949).

Conclusions

"The same principles would, of course, apply to backward vertical and conglomerate acquisitions and mergers.

"The enactment of the bill will limit further growth of monopoly and thereby aid in preserving small business as an important competitive factor in the American economy." *

The U. S. Supreme Court, in the Dupont case, also supports this legal conclusion in the following language: [1]

"The first paragraph of Section 7, written in the disjunctive plainly is framed to reach not only the corporate acquisition of stock of a competing corporation where the effect may be substantially to lessen competition between them, *but also corporate acquisitions of stock of corporations, competitor or not, where the effect may be either* (1) to restrain commerce in any section or community, or (2) tend to create a monopoly of any line of commerce . . .

"We hold that *any acquisition* by one corporation of all or any part of the stock of another corporation, *competitor or not*, is within the reach of the Section whenever the reasonable likelihood appears that the acquisition will result in a restraint of commerce or in the creation of a monopoly of any line of commerce. . . ." *

ORDER OF DIVESTITURE

IT IS ORDERED that respondent The Procter & Gamble Company, a corporation, and its subsidiaries, officers, directors, agents, representatives and employees, shall cease and desist from violating Section 7 of the Clayton Act, as hereinbefore set forth in the Findings hereof, and shall divest itself of all assets, properties, rights or privileges,

* Emphasis supplied.
[1] 353 U.S. 586, pages 590-91-92.

tangible or intangible, including but not limited to, all plants, equipment, trade names, trademarks and goodwill acquired by said respondent as a result of the acquisition of the assets of the Clorox Chemical Company, together with the plant, machinery, buildings, improvements, equipment and other property of whatever description which has been added to them, in such a manner as to restore it as a going concern in the manufacture and sale of household liquid bleach in which the said Clorox Chemical Company was engaged, in substantially the same productive capacity as was possessed by the said Clorox Chemical Company at, and immediately prior to, the time of the said acquisition by respondent The Procter & Gamble Company.

IT IS FURTHER ORDERED that by such divestiture none of the stocks, assets, rights, or privileges, tangible or intangible, acquired or added by respondent, shall be sold or transferred, directly or indirectly, to anyone who is at the time of divestiture, or for two years before said date was, a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with, or under the control, direction, or influence of respondent or any of respondent's subsidiary or affiliated corporations.

/s/ EVERETT F. HAYCRAFT,
EVERETT F. HAYCRAFT,
Hearing Examiner.

June 17, 1960.

[Caption Omitted]

NOTICE OF INTENTION TO APPEAL

(Received July 15, 1960)

To The Honorable Robert M. Parrish, Secretary:

COMES NOW respondent, The Procter & Gamble Company, by its attorneys, and in accordance with Rule 3.22

Notice of Intention to Appeal

of the Commission's Rules of Practice for Adjudicative Proceedings, gives notice of its intention to appeal from the initial decision of the Hearing Examiner filed on June 17, 1960 and served on July 7, 1960.

Respectfully submitted,

JOSEPH C. DINSMORE,
RICHARD W. TODD,
KENNETH C. ROYALL,
FREDERICK W. R. PRIDE,
ROBERT D. LARSEN,

By /s/ ROBERT D. LARSEN,
Attorneys for Respondent.

Dated: July 15, 1960

[Caption Omitted]

NOTICE OF INTENTION TO APPEAL

(Received July 15, 1960)

COMES NOW counsel supporting the complaint in the above-entitled matter and notifies the Commission that he intends to appeal the failure of the Hearing Examiner to make certain findings of fact in his Initial Decision in this matter and to appeal certain rulings of the Hearing Examiner limiting counsel supporting the complaint in his proof during the course of the hearings.

Respectfully submitted,

/s/ WILLIAM R. TINCHER,
WILLIAM R. TINCHER,
Counsel Supporting the Complaint.

July 15, 1960.

Order Remanding Proceeding to Hearing Examiner

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners:

PAUL RAND DIXON, *Chairman*
ROBERT T. SECREST
SIQURD ANDERSON
WILLIAM C. KERN
PHILIP ELMAN

In the Matter of THE PROCTER & GAMBLE COMPANY, a corporation.	Docket No. 6901

ORDER REMANDING PROCEEDING TO HEARING EXAMINER

(Received June 15, 1961)

Counsel supporting the complaint and respondent having filed cross-appeals from the initial decision in this matter; and

The Commission having determined that the record as presently constituted does not provide an adequate basis for informed determinations as to the actual or probable effects of respondent's acquisition of Clorox Chemical Co. on competition in the production and sale of household liquid bleach, and being of the opinion that the record should be supplemented in this respect to the end that all of the issues involved in the case may be finally and conclusively disposed of on their merits:

IT IS ACCORDINGLY ORDERED that the initial decision be, and it hereby is, vacated and set aside.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the hearing examiner for the reception of such further evidence concerning the

competitive effects of the aforementioned acquisition as may be offered in conformity with the views expressed in the accompanying opinion of the Commission.

IT IS FURTHER ORDERED that after the receipt of such additional evidence the hearing examiner make and file a new initial decision on the basis of the entire record herein.

By the Commission, Chairman Dixon and Commissioner Elman not participating.

[SEAL]

/S/ JOSEPH W. SHEA
JOSEPH W. SHEA,
Secretary.

ISSUED: June 15, 1961

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners:

PAUL RAND DIXON, *Chairman*
ROBERT T. SECREST
SIQURD ANDERSON
WILLIAM C. KERN
PHILIP ELMAN

In the Matter of THE PROCTER & GAMBLE COMPANY, a corporation.	Docket No. 6901

OPINION OF THE COMMISSION

By the Commission:

The complaint in this matter charges respondent, The Procter & Gamble Company, with violating Section 7 of

the Clayton Act, as amended, by acquiring the assets and business of Clorox Chemical Co. (hereinafter referred to as Clorox). The hearing examiner has filed his initial decision holding that the acquisition violated Section 7, as alleged, and the matter is now before the Commission on cross-appeals of respondent and counsel supporting the complaint. The complaint alleges in substance that the acquisition of the dominant firm in the household liquid bleach field by the leading producer in related product fields may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of household liquid bleach. It specifically charges in this connection that producers of household liquid bleach may be unable to compete with respondent due to any one, any combination of, or all of the following factors:

(a) Respondent's market position;
(b) Respondent's financial and economic strength;
(c) Respondent's advertising ability and experience;
(d) Respondent's merchandising and promotional ability and experience;
(e) Respondent's "full-line" of cleansing and laundry products;
(f) Respondent's ability to command consumer acceptance of its products and of valuable grocery store shelf space;
(g) Respondent's ability to concentrate on one of its products, or on one selected section of the country, the full impact of its advertising, promotional, and merchandising experience and ability.

As the hearing examiner has pointed out, this case involves a conglomerate acquisition and is therefore one of first impression. In all previous Section 7 proceedings before the Commission, the challenged acquisitions were of either a vertical or horizontal nature. Here, however, the

acquiring firm was neither a supplier or customer, nor a competitor of the acquired. Such a merger, therefore, does not have the effect of automatically foreclosing to competitors any market outlet or source of supply as in a vertical merger, nor does it have the effect of automatically eliminating a competitior as in a horizontal merger. Nevertheless, such a merger violates Section 7 if it has the proscribed effect. We repeat here with emphasis our recent holding in the *Scott Paper* case:[1] "Under Section 7, as amended, any acquisition whether it be vertical, conglomerate or horizontal is unlawful if the effect may be substantially to lessen competition or to tend to create a monopoly in any line of commerce."[2] Therefore, respondent's contention that this type of acquisition is not embraced by Section 7 has no merit and is rejected.

The question in this proceeding thus is whether the proscribed effect may in fact result from this particular acquisition where the only immediate effect is the replacement of one competitor by another. In making this determination, the same tests apply as in any other matter coming within the purview of Section 7, but since a conglomerate acquisition does not have the above-mentioned "automatic" effects of a vertical or horizontal merger, such a determination is necessarily difficult to make from a consideration of evidence relating solely to the competitive situation existing in the relevant market prior to the acquisition and to the pre-merger status of the acquired and

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[1] *In the Matter of Scott Paper Company*, Docket 6559 (Dec. 16, 1960).

[2] This holding follows both from the language of the statute and from relevant legislative history. The House Committee report stated:

> ". . . the bill applies to all types of mergers and acquisitions, vertical and conglomerate as well as horizontal, which have the specified effects of substantially lessening competition * * * or tending to create a monopoly." (H.R. Rep. No. 1191, 81st Cong. 1st Sess. p. 11 (1949).)

acquiring corporations. Consequently, a consideration of post-acquisition factors is appropriate.

In this case, the hearing examiner has placed considerable emphasis on evidence relating to the post-acquisition activities of Clorox. Relying primarily on this evidence, he has concluded that the dominant market position held by Clorox in the production and sale of liquid bleach has been enhanced to the detriment of actual and potential competition; that there is an increasing tendency of concentration of competitors in the liquid bleach industry and that other liquid bleach producers will be unable to expand their operations by normal methods of competition. While we are of the opinion that, in the circumstances of this case, he was correct in considering this evidence, we do not agree that it supports his conclusions with respect to the probable effects of the acquisition.

The hearing examiner has found in this connection that, subsequent to the acquisition, Clorox has systematically countered the promotional activities of Purex Chemical Company, the second largest producer of liquid bleach, by its own advertising and promotional campaigns in various market areas throughout the country. With one exception, however, the effectiveness of these counter promotional activities cannot be determined from the record. The evidence discloses that in one market area, Erie, Pennsylvania, Purex was unsuccessful in its attempt to conduct a market test by reason of respondent's counter promotions. We do not believe that it can be inferred from this one showing, however, that the same results would occur in other market areas that Purex or other producers may attempt to enter or in which they may attempt to expand their operations.

The hearing examiner has also found that, subsequent to the acquisition, Clorox's market share of the total house-

hold liquid bleach sales had increased substantially. This finding is based on data obtained from reports covering the period August, 1957, to November, 1958, made by the A. C. Nielsen Company Marketing Service. It appears that the increase in the Clorox market share in the first twelve months of this period was .3 of one Nielsen point and, in the entire sixteen months, .42 of one Nielsen point. This increase, however, is only about half of the average increase of .8 of one Nielsen point made by Clorox in each of the five years prior to the acquisition. The hearing examiner's failure to consider this pre-acquisition growth trend of Clorox detracts from his conclusion that there had been a substantial increase in the dominant market position held by Clorox as a result of the acquisition.

In our opinion, the post-acquisition data neither supports the hearing examiner's conclusions nor does it indicate in any manner that the acquisition will not result in a substantial lessening of competition or tendency toward monopoly. As pointed out by counsel supporting the complaint, very few of respondent's merchandising techniques were used during the first eight months after the acquisition. Thereafter, when consumer promotions were used, although only on a limited basis, the market share of Clorox increased sharply. Moreover, counsel supporting the complaint contend that, during the sixteen month period after the acquisition, respondent had put into effect only a few of the changes which it might reasonably be expected to make in the production and merchandising of liquid bleach. These changes did not extend to the use of respondent's manufacturing facilities, the use of respondent's sales force in place of independent brokers, coordination of the advertising and promotion of Clorox with respondent's full line of related products and the use of national television ad-

vertising. According to counsel supporting the complaint, it is only when respondent begins to use the merchandising techniques and methods by which it has achieved spectacular successes against major competition in the soap and detergent fields that the full impact of this financially powerful corporation will be made on competition in the liquid bleach industry.

The record as presently constituted does not provide an adequate basis for determining the legality of this acquisition. In the circumstances, we might dismiss the complaint and direct our staff to maintain continuing surveillance of this market, with the possibility of bringing another complaint in the future if we think it warranted. We believe, however, that the public interest will be better served and the respondent not unduly inconvenienced by our remanding the case for the taking of additional evidence. This is likely to obviate the necessity of a plenary proceeding in the future that would be more costly in time and money to both the Commission and respondent than adding to the present record. Moreover, this disposition of the matter, providing as it will a more complete and detailed post-acquisition picture, has the advantage of allowing the Commission an informed hindsight upon which it can act rather than placing too strong a reliance upon treacherous conjecture.

The case will, therefore, be remanded to the hearing examiner for the reception of evidence relating to the competitive situation as it presently exists in the liquid bleach industry. This evidence should relate to events occurring subsequent to November 1958, and should include market share data in each of the geographical regions specified on page 17 of the initial decision, as well as information directed to more clearly delineating the production and mer-

chandizing facilities and techniques which have been utilized by Clorox under the control of respondent.

Chairman Dixon and Commissioner Elman not participating.

June 15, 1961.

[Caption Omitted]

ORDER SCHEDULING HEARING

(Received Nov. 7, 1961)

IT IS HEREBY ORDERED that a hearing be held on November 30, 1961, at 10:00 a.m., in Room 532, Federal Trade Commission Building, Washington, D.C., to take further evidence concerning the competitive effects of the respondent's acquisition of Clorox Chemical Co., pursuant to the direction of the Commission in order dated June 15, 1961.

/s/ EVERETT F. HAYCRAFT
EVERETT F. HAYCRAFT,
Hearing Examiner.

November 6, 1961.

[Caption Omitted]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS, AFTER REMAND, FILED BY RESPONDENT, THE PROCTER & GAMBLE COMPANY

(Received Jan. 15, 1962)

To The Honorable Everett F. Haycraft, *Hearing Examiner:*

Pursuant to the rules of practice of the Federal Trade Commission and the ruling of the Hearing Examiner made on December 12, 1961, the respondent in the above entitled

proceeding, The Procter & Gamble Company, by its attorneys, submits to the Hearing Examiner its proposed findings of fact and conclusions for his consideration and respectfully requests that the Hearing Examiner find the facts accordingly and include these proposed findings and conclusions in his revised initial decision as his findings and conclusions.

PRELIMINARY STATEMENT

1) Analysis of Commission's Opinion and Order

On June 15, 1961, the Commission issued its Opinion and Order on the cross-appeals filed from the Initial Decision in this proceeding.

By such Order the Commission vacated and set aside the Initial Decision.

It held (p. 1) that the record which was before it "does not provide an adequate basis for informed determinations as to the actual or probable effects of respondent's acquisition of Clorox Chemical Co. on competition in the production and sale of household liquid bleach."

By such Order the Commission also remanded the proceeding to the Hearing Examiner "for the reception of such further evidence concerning the competitive effects of the aforementioned acquisition as may be offered in conformity with the views expressed in the accompanying opinion of the Commission."

In its accompanying Opinion the Commission gave the reasons which underlay its decision. It initially noted (p. 2) that "this case involves a conglomerate acquisition." It then defined the issue in a conglomerate acquisition (p. 3) to be "whether the proscribed effect may in fact result from *this particular acquisition* where the *only immediate effect is the replacement of one competitor by another.*"

Throughout its Opinion the Commission emphasized that in a conglomerate acquisition, this issue was to be resolved by an evaluation of the objective evidence as to the "probable effects of the acquisition."

Then, after reviewing various aspects of the evidence, the Commission stated (p. 3):

> ". . . we do not agree that [the evidence] supports [the Examiner's] conclusions with respect to the probable effects of the acquisition."

And the Commission expressly concluded that (p. 5):

> "The record as presently constituted does not provide an adequate basis for determining the legality of this acquisition. In the circumstances, we might dismiss the complaint. . . ."

We submit that the Opinion and Order of the Commission represent a clear and unequivocal decision. It is a decision that the evidence, in the record which was before it, *was insufficient to establish any violation of Section 7.* This decision is binding on the parties and on the trial examiner and is controlling.

2) Scope and Purpose of the Remand

The Commission's Opinion further indicated the scope and purpose of the remand. It concluded with the statement (p. 5) that: "The case will, therefore, be remanded to the hearing examiner for the reception of evidence relating to the competitive situation as it *presently exists* in the liquid bleach industry." It added that: "This evidence should relate to *events occurring subsequent to November 1958*, and should include market share data . . . as well as information directed to more clearly delineating

the production and merchandising facilities and techniques [of Procter] which have been utilized by Clorox under the control of respondent." *

The Commission's Order ended (pp. 1 and 2) with the provision that;

> ". . . after the receipt of such additional evidence the hearing examiner make and file a new initial decision on the basis of the entire record herein."

Since the Commission has found that the evidence in the record before it was not sufficient to support an order against the respondent, there is only one reasonable interpretation to be placed upon the above provision in its Order. That is, that the burden is squarely placed on the complainant to establish, from any new evidence it could adduce on remand, that a violation of Section 7 had occurred, particularly with respect or attributable to those factors enumerated by the Commission in its Opinion.

Thus, in effect, the Commission has held that the evidence which was in the record before the Commission is merely a background against which the Examiner is to gauge such new evidence as the Commission had envisaged would be offered on remand.

In other words, if the complainant could affirmatively establish that as a result of the acquisition there has been

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* In its Opinion the Commission enumerated various matters which it plainly anticipated would be the subject of evidence to be offered by Commission's counsel on the remand. These, in addition to market shares, related to (a) any utilization and the effect thereof, of counter promotional activities; (b) any additional "concentration of competitors in the liquid bleach industry"; (c) any inability of competitors "to expand" "by normal methods of competition"; (d) any changes in the use of "manufacturing facilities"; (e) any use of Procter's "sales force in place of independent brokers"; (f) any "coordination of the advertising and promotion of Clorox with [Procter's] full line of related products"; and (g) any use of "national television advertising." We will refer to each of these matters in the presentation of our proposed findings.

any substantial lessening of competition since November 1958, an order should issue against the respondent. On the other hand, if today there exists no more evidence respecting any claimed lessening of competition than existed in November 1958, or if, as the respondent contends, the market position of competitors has been enhanced, or will in the future probably be enhanced, over what it was in November 1958, then the action must be dismissed.

3) Issues Foreclosed by Commission's Opinion and Order

There is one particular issue in this case which has been completely foreclosed by the Commission's Opinion. This is the point that evidence of Procter's size, its financial resources, or its experience and success in the merchandising of its other products was not sufficient in this case to support a finding that a "probable" lessening of competition would result from the acquisition.

All of the evidence pertaining to Procter's resources, to its expertise in marketing, to its success in merchandising other products, to its various other facilities, was in this record before the Commission reviewed it. The Commission in its Opinion (pp. 1 and 2) expressly adverted to it. In no respect has anything of substance been added in these areas on the remand.*

Thus we repeat that all of the evidence on these matters was and continues to be insufficient to establish a violation of Section 7.

Further, the Commission's decision in removing from this case any issue involving Procter's "size and success" is directly in line with its later decision with respect to the

* On the remand, Commission's counsel did introduce several exhibits reflecting Procter's present financial position. These, however, in no way indicate that, in respect of the matter of "size," Procter's financial position has substantially or comparatively changed since the acquisition.

conglomerate merger aspects of the *Union Carbide* case.* There, too, it directly gave expression to the proposition that, in a conglomerate merger case where there is only the replacement of one competitor by another, the fact that the acquiring company has assets and resources much larger than the company acquired is of no determinative significance.

4) Objective Proof in a Conglomerate Merger Case

There is another significant aspect of the Commission's Opinion. This proceeding was the first true conglomerate merger which had come before the Commission. As stated in the Commission's Opinion, it was a case of "first impression."

In enunciating the considerations which were controlling in determining the legality of such an acquisition, the Commission stressed the distinction between this and a horizontal or vertical merger. It said (p. 3) that such a determination is necessarily more difficult than in a case in which there are "automatic" effects on competition resulting from the acquisition per se.

In line with this, the Commission emphasized that actual facts—based upon experience—are more meaningful in a conglomerate merger case than prophecy or speculation. In the language of the Commission (p. 5) it was remanding the proceeding so as to secure "a more complete and detailed post-acquisition picture, [which] has the advantage of allowing the Commission an informed *hindsight* upon which it can act rather than placing too strong a reliance upon *treacherous conjecture*."

This expression, we contend, requires the Examiner to predicate his decision on objective, current *facts*, and the

* In the Matter of *Union Carbide Corporation*, F. T. C. Docket 6826 (Sept. 25, 1961).

reasonable inferences to be drawn therefrom. He is to forego prophecy and "treacherous conjecture."

The Commission has thus laid down two new and important principles in determining the legality of a conglomerate acquisition.

First, while holding that in appropriate circumstances Section 7 can be violated as a result of a conglomerate acquisition, the Commission clearly distinguished between the difficulty in establishing a violation in the case of a conglomerate acquisition and the lesser burden in the case of a horizontal or vertical acquisition, where an effect on competition automatically flows from the acquisition itself.

The second principle emphasized by the Commission is in accord with and supplements the first. In its Opinion, the Commission deprecated the use of guesswork in a conglomerate merger situation and emphasized the importance of long-term and representative factual situations. This must be recognized as a step in the direction of realism. The factual situation now developed in this case is an excellent illustration of this principle. The facts introduced in the record on the remand now enable the Examiner, in accordance with the Commission's decision, to decide this case on a representative sample of more than four years. They make possible the discarding of temporary, fragmentary, isolated and conjectural incidents. They eliminate any necessity for relying on broad inferences and conclusions based only on speculation.*

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* The ruling of the Commission differentiating between conjecture and "hindsight" has a special application in this case. For here the Examiner did give great weight to "conjectures" and prophecies, including the unsupported opinion of competitors and broad speculations keyed to facts which were of a temporary or non-representative nature. We can understand that, on the basis of language in decisions dealing with horizontal or vertical acquisitions, the Examiner could have felt justified in following this course.

The Commission's Opinion thus provides guidance in what was previously an uncharted area in the determination of the legality of conglomerate acquisitions. This guidance is particularly pertinent in evaluating the record in this proceeding. For here the complainant has failed to sustain its burden of factually proving that, with the "hindsight" of four post-acquisition years, there *has been* or probably will be a substantial lessening of competition or tendency to monopoly in the liquid bleach industry as a result of the acquisition of Clorox by Procter.

RESPONDENT'S PROPOSED FINDINGS

A. Findings Re Certain Matters Which the Commission Directed or Indicated Were to Be Considered on the Remand

As we have previously pointed out, the Commission indicated that there were certain specific factors which should be examined on the remand. These involved matters relating to the competitive situation which presently exists in the liquid bleach industry. And as to these matters the Commission forcefully said that it wanted facts rather than prophecies. The clear implication of the Commission's Opinion is that it would regard such evidence to be of determinative significance.

It thus clearly placed upon the complainant the burden of showing the nature and effect of any post-acquisition "changes" or circumstances which had had any adverse competitive effects. The proposed findings which we here set forth in this section will relate to these matters.

Preliminarily, we note that it is with respect to the great majority of these matters that the record before the Examiner on remand is most remarkable. For there is a complete absence of any proof by complainant as to them. Not

only is there an absence of any proof; there is also an absence of any basis even for an inference that the acquisition has been followed by any anti-competitive "changes" —regardless of cause or effect.

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1. There is no evidence that as a result of any change since November 1958 any of the respondent's manufacturing or production facilities have been utilized for the manfacture or production of Clorox.

[*Comment:* Had any such utilization of any of Procter's facilities been made, such fact could have been readily established. Failure of Commission's counsel to introduce any such proof, or even to suggest that any such proof existed, compels the conclusion that no change in the facilities used for the manufacture and production of Clorox has taken place.]

2. There is no evidence that in the merchandising of Clorox any use has been made of Procter's own sales force, or that Clorox's method of distribution through independent brokers has been changed in any respect. Nor is there any evidence that there is any plan or intention to change such method of distribution or that any change would be more economical or effective.

[*Comment:* In the original hearings counsel for the complainant confidently predicted that a change to direct selling through Procter's salesmen was imminent. In addition, it was asserted that distribution through brokers would surely be discontinued because direct selling was more economical and desirable.

There is, of course, not a shred of evidence indicating that any change in the method of distribution has been made or is contemplated or is desirable. The only possible inference is that distribution through independent brokers has continued to be successful.]

3. There is no evidence that there has been any coordination of the advertising and promotion of Clorox with any other Procter product or with Procter's line of products. Nor is there any evidence that any such coordination would be desirable or effective or that so-called "savings in advertising expenditures" would be effectuated as a result thereof.

> [*Comment:* Here, again, not a scintilla of evidence bearing upon this subject was offered. Yet had any such "coordination" taken place it could readily have been established. Again, this was one of the confident predictions not only of Commission's counsel but of competitive bleach producers.]

4. There is no evidence that since November 1958 Clorox has increased its shelf space in grocery stores or that it has any disproportionate amount of shelf space or that it has any "command" over more shelf space than, or as much shelf space as, its competitors.

> [*Comment:* The matter of shelf space is, of course, simply another item as to which not a single reference was made by Commission's counsel at the hearings on the remand, even though the effect of the acquisition on the allocation of shelf space was a subject in which the Commission several times voiced its interest in the oral argument before it.]

5. There is no evidence that since November 1958 the production or distribution of Clorox has been advantaged by the use of any of Procter's technical, research or other facilities, or that any of the same have been utilized to the detriment of any competing bleach producer.

> [*Comment:* Here, once more, the record is silent. And this despite all of the magnified claims in the earlier

hearings as to the importance and effect of these facilities.]

6. There is no evidence that since November 1958 there has been any use by Clorox of network television advertising, or that Clorox has at any time used any network television advertising, or that any use of network television advertising would be effective or desirable in the merchandising of Clorox liquid bleach.

[*Comment:* Once again there is not a word concerning this subject which was harped upon so extensively in the initial hearings and in complainant's appeal to the Commission.]

7. There is no evidence that since November 1958 there has been any concentration of competitors in the liquid bleach industry. Nor is there any evidence from which it could be inferred that any tendency towards such concentration exists.

8. There is no evidence that since November 1958 any other bleach producer has been unable to expand its operations by normal methods of competition. Nor is there any evidence that since 1958 any other bleach producer has been dissuaded from expanding its operations by reason of the acquisition or otherwise.

9. There is no evidence that since November 1958 any producer of liquid bleach was required to withdraw or did withdraw from the liquid bleach business.

10. There is no evidence that since November 1958 any competitor of Clorox has been adversely affected by any activities of Clorox while under the control of respondent in either the production, merchandising or distribution of household liquid bleach.

[*Comment:* We direct particular attention to the three preceding proposed findings. They have an especial significance in the present posture of this proceeding.

The Examiner will recall that complainant's counsel in the initial hearings elicited testimony from numerous competitors of Clorox. With varying degrees of partisanship, they glibly speculated as to damaging effects which the acquisition might have on their businesses. The identities of these prior witnesses have, of course, been known to complainant's counsel. They could have been made available as witnesses, on the remand, had counsel chosen to call them.

Yet not a single one of them was called to testify. Commission's counsel have seen fit to elicit not a word from these competitors as to whether any of their "fears" had been well-founded or borne out. And this despite the Commission's emphasis upon "hindsight."

We maintain that the Examiner must conclude that had these witnesses (or any other competitors of Clorox) been called their testimony would have been adverse to the complainant, and that they could not have testified that they had been adversely affected by the acquisition.

Indeed, as will be reflected in later proposed findings, the position of Clorox's competitors since the acquisition has been steadily and substantially improved.]

11. There is no evidence that there are or have been any barriers to the entry of any prospective producer into the liquid bleach industry or that any prospective producer has been excluded for any reason whatsoever.

[*Comment:* There never was in the record any evidence that any prospective newcomer into the liquid bleach field was faced with any "barriers" which dissuaded him from engaging in business. Nothing has been added to fill that vacuum.]

Respondent's Proposed Findings

The proposed findings contained in the above section might appropriately be listed under a heading "What Complainant Has Not Shown" or "Disproven Prophecies." We emphasize again that the Commission itself certainly invited the complainant to make whatever factual showing it could in respect of these matters. We say that complainant's failure to do so can only reasonably be construed by the Examiner as indicating that no such facts in support of the complainant exist.

B. The Market Share Position of Clorox Liquid Bleach Before and After Acquisition

The Commission's Opinion plainly indicates the significance which it attaches to evidence respecting the trend of market shares. At page 4 of its Opinion it properly notes that no conclusion can be reached with respect to the substantiality or materiality of any post-acquisition Clorox market share increase, which is claimed to be a result of the acquisition, without consideration of and comparison with the *"pre-acquisition growth trend of Clorox."*

Post-acquisition statistical data were available for only a limited time period at the close of the initial hearings. Now there are before the Examiner market share figures for four full years following the acquisition. These undisputed figures show that the growth trend of Clorox in those four years was substantially identical with the trend prior to the acquisition. From the analysis of the market share figures in the following proposed findings, we submit that no conclusion can be drawn other than that the market share trend of Clorox has not been enhanced, either as a result of the acquisition or otherwise.

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12. Nielsen data respecting market shares in the household liquid bleach industry are compiled and reported on

both a 32-ounce equivalent unit basis and on a consumer dollar basis.[1] The 32-ounce equivalent unit basis is preferable to the consumer dollar basis as a reflection of market conditions or market share data because it measures the actual volume of merchandise moving through grocery stores, and is not influenced by retail price changes, temporary or otherwise.[2]

[*Comment:* Statistical data used throughout these findings with respect to household liquid bleach moving through grocery stores in the United States are based upon the Nielsen Food Index Reports and exhibits prepared therefrom which were offered in evidence. The accuracy of Nielsen figures was stipulated by both parties at the instance of complainant in the initial hearings (Tr. 2066A-2066P) and reaffirmed by counsel for both parties during the hearings on remand (Tr. 6275).]

Record support: [1] Nickelson, Tr. 6273-4.
[2] Nickelson, Tr. 6280-1.

13. The use of *annual* figures is best for appraising market and competitive conditions.

[*Comment:* The Commission in its Opinion (p. 4) relied upon annual market share figures. The use of the Nielsen data on an annual basis was acknowledged as proper by the complainant's sole witness on remand, Mr. Stratton (Tr. 6333-36). As Mr. Nickelson, Executive Vice President of the A. C. Nielsen Company, stated in the initial hearings (Tr. 5469-70) and again stated without contradiction in the hearings on remand (Tr. 6285), the use of annual figures is best for appraising market and competitive conditions. This is because a 12-month period eliminates seasonal and other fluctuations which may greatly influence and distort the results of any comparison between bi-

monthly shares for successive reporting periods or between bi-monthly share or shares in one year as compared to the same bi-monthly period or periods in another year.]

14. The annual changes in Clorox market share of the total sales of household liquid bleach in the United States, moving through grocery stores, for each of the four years preceding the acquisition and for each of the four years following the acquisition on a 32-ounce equivalent unit basis are as follows: [1]

PRIOR TO ACQUISITION

Year Ended August 1.	*Clorox Share*	*Point Change*
1953	41.4	—
1954	43.0	+1.6
1955	44.0	+1.0
1956	44.8	+0.8
1957	45.3	+0.5
Total Change		+3.9
Average Annual Change Prior to the Acquisition		*+0.975*

Record support: [1] RX 134 A. This exhibit and other prepared by Mr. Nickelson and introduced in evidence by respondent cover 12-month periods ended August 1, the date of acquisition and the annual anniversary date thereafter. This is the only Nielsen 12-month period which permits presentation of the situation before and after acquisition on an annual basis and which permits an analysis of all of the Nielsen data in the record. The use of market share data on this basis was adopted by the Commission in its Opinion and will be used throughout the findings wherever available.

SUBSEQUENT TO ACQUISITION

Year Ended August 1.	*Clorox Share*	*Point Change*
1958	45.8	+0.5
1959	46.8	+1.0
1960	48.8	+2.0
1961	48.6	−0.2
Total Change		+3.3
Average Annual Change Subsequent to the Acquisition		*+0.825*

15. The average annual Clorox market share gain in the four years following the acquisition, on a 32-ounce equivalent unit basis, was 0.825 of one Nielsen point, a slight decrease from the 0.975 of one Nielsen point average annual Clorox market share increase in the four years prior to the acquisition.[1]

Record support: [1] RX 134 A.

16. On the consumer dollar basis, the annual changes in Clorox market share of the total sales of household liquid bleach in the United States, moving through grocery stores, for each of the four years preceding the acquisition, and for each of the four years following the acquisition are as follows: [1]

Record support: [1] RX 135 A.

PRIOR TO ACQUISITION

Year Ended August 1.	*Clorox Share*	*Point Change*
1953	45.3	—
1954	46.4	+1.1
1955	47.1	+0.7
1956	47.8	+0.7
1957	48.4	+0.6
Total Change		+3.1
Average Annual Change Prior to the Acquisition		*+0.775*

SUBSEQUENT TO ACQUISITION

Year Ended August 1.	*Clorox Share*	*Point Change*
1958	48.7	+0.3
1959	50.1	+1.4
1960	51.8	+1.7
1961	51.9	+0.1
Total Change		+3.5
Average Annual Change Subsequent to the Acquisition		*+0.875*

17. On the consumer dollar basis, the average annual Clorox market share gain in the four years following the acquisition was 0.875 of one Nielsen point as compared to 0.775 of one Nielsen point for the four years prior to the acquisition.

Record support: [1] RX 135 A.

18. In the four years following the acquisition, the average annual gain in Clorox market share *declined 0.15* of one Nielsen point on the 32-ounce equivalent unit basis and *increased 0.10* of one Nielsen point on the consumer dollar basis.[1] A small change of this kind has no statistical significance.[2] Thus, there is no significant difference between the post- and pre-acquisition growth trend of Clorox.

[*Comment:* The calculation of the post- and pre-acquisition growth trend of Clorox market share in these two exhibits adopts the method used and commented upon by the Commission in respect of the pre-acquisition growth trend of Clorox market share.]

Record support: [1] RX 134 A; RX 135 A.
[2] Nickelson, Tr. 6287.

19. In view of the substantially identical growth trends of Clorox market share in the four years preceding and in

the four years following the acquisition, such gain as there was in the Clorox market share in the four years following the acquisition cannot be attributed to or be deemed to result from the acquisition.

20. Market share data for the most recent 12-month period are the more indicative of *current market conditions* in the liquid bleach industry than such data for any other single prior 12-month period.[1]

Record support: [1] Nickelsen, Tr. 6290.

21. In the most recent 12-month period, the absolute Clorox market share on a 32-ounce equivalent unit basis *declined 0.2* of one Nielsen point from the Clorox market share in the preceding 12-month period.[1] On the consumer dollar basis, the absolute Clorox market share *increased only 0.1* of one Nielsen point.[2] In no other 12-month period during the entire eight years prior to August 1, 1961 (the entire period for which data are available), was there a decline in the Clorox market share from the preceding 12-month period on either the 32-ounce equivalent unit basis or on the consumer dollar basis.[3] In no other 12-month period during the eight years prior to August 1, 1961 was the increase in the Clorox market share over the preceding 12-month period, on any basis, as little as 0.1 of one Nielsen point.[3]

Record support: [1] RX 134 A.
[2] RX 185 A.
[3] RX 134 A; RX 135 A.

22. There is no evidence indicating any reasonable probability of a significant or substantial increase in Clorox market share in the future. On the contrary, the current market position of Clorox liquid bleach undeniably indicates a leveling off of the absolute Clorox market share.

23. In addition to compiling and reporting data on a nationwide basis, the Nielsen Food Index also reports mar-

ket share data for each of the nine *standard* Nielsen "reporting" territories.[1]

[*Comment:* Respondent objected to the admission in evidence of Nielsen data relating to market share statistics in the nine standard Nielsen "reporting" territories (Tr. 6253-55).

In support of its objection, respondent proffered evidence to the effect that these standard Nielsen territories have no relationship whatsoever to areas of effective competition in the household liquid bleach industry (Tr. 6306).

The following proposed findings analyze the Nielsen market share data on a regional basis without waiver of respondent's objection to the relevancy of these data. See Tr. 6308.]

Record support: [1] Nickelson, Tr. 6296.

24. There is no proof that the nine standard Nielsen "reporting" territories delimit areas of effective competition in the household liquid bleach industry.

[*Comment:* The standard Nielsen reporting territories are arbitrarily established by the A. C. Nielsen Company (Tr. 1797). The Nielsen reports are broken down into these territories regardless of the product or the industry as to which Nielsen is reporting and regardless of the respective marketing areas of the products covered. The Examiner in his Initial Decision found that the geographical confines of any regional and local markets cannot be fixed with any exactitude (Initial Decision, p. 13). These facts were uncontested in the initial hearings and complainant's counsel introduced no evidence on the remand relating to the geographical confines of any areas of effective competition in the liquid bleach industry.

We do not know what contentions, if any, the complainant may make in connection with the standard

Nielsen "reporting" territories and we therefore defer further comment, if any, until our Reply.]

25. Market share data, on a 32-ounce equivalent basis, within each of the standard Nielsen territories, both before and after the acquisition, have been summarized.[1]

[*Comment:* As stated at the hearings on the remand, respondent, while preserving its objection to the materiality of any such evidence, submitted these summaries for the convenience of the Examiner.]

Record support: [1] RX 136 A-R.

26. In the nine standard Nielsen "reporting" territories, the post-acquisition growth trend of Clorox, as compared to such trend in the pre-acquisition period, declined in six of the territories, was the same in one territory, and increased in only two of the territories.[1]

Record support: [1] RX 136 A-R.

27. There is no evidence since November 1958 as to market or competitive conditions or the activities of competitors of Clorox within any one of such Nielsen territories.

[*Comment:* Thus, there are no criteria from which to determine or evaluate the effect of Clorox competion in such territories.]

28. There is no proof that the changes in the market share in any of the Nielsen territories were a result of or attributable to or affected in any way by the acquisition.

29. The fact that there is no uniformity in such territorial changes throughout the country leads to the conclusion that the acquisition has not been a factor which has influenced either upward or downward changes.

C. Findings Relating to Merchandising "Techniques"

The Commission stated that it desired information as to "merchandising techniques" which have been utilized by Clorox since November 1958.

As to this aspect of the remand, complainant contented itself by introducing Commission's Exhibit 718.* It contained a list and a description of each promotion engaged in by Clorox from July 1958 through July 1961. It showed the cost of each such promotion. It also showed the Clorox brokerage areas in which each promotion was conducted, thus indicating which of the promotions were national in scope and which were confined to particular areas.

Since this is the only proof respecting any merchandising "techniques" which have been engaged in by Clorox, we frankly confess that we do not understand what meaningful conclusions can be adduced from it.

True, it does supplement the proof introduced in the initial hearings showing that consumer promotions had been utilized in merchandising Clorox since the acquisition. But that fact was disclosed in the record which was before the Commission, and was not deemed determinative or conclusory in any sense.

Likewise, the record prior to remand showed that, for the fiscal year ending in June 1958, expenditures approximating $400,000 were contemplated for Clorox promotions, in addition to the expenditures for the theretofore established Spring and Fall Housecleaning promotions. Still there was no indication in the Commission's Opinion that this was an inordinate expenditure or had any trade-restraining consequences. It is now disclosed that the average amount of *all* promotional expenditures for the last three fiscal years, ending July 1961, was relatively in

* This exhibit had been voluntarily furnished by the respondent.

line with what had been budgeted for the first year following the acquisition.

Consequently, no point can be made that there has been any greatly stepped-up promotional activity, regardless of the effect of any such activities and regardless of whether they were related to the acquisition in any way.

There is, however, one interesting sidelight respecting this evidence. The expenditures for promotions, as to which the market effect would be reflected in the Nielsen bi-monthly reports for the 12-month period August 1, 1960-July 31, 1961, were not significantly different from those for the two preceding 12-month periods. In both of the prior periods the Clorox market share increased.* Yet, as is shown in our foregoing proposed findings respecting market shares, the Clorox market share *declined 0.2 of one Nielsen point during the last 12-month period* although expenditures for promotions were substantially the same as in the three preceding years. If any conclusion can be drawn, it must be that promotional activities of the nature engaged in by Clorox have no discernible effects, as such, in the market.

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30. All of the types of promotions engaged in by Clorox in the period from July 1958 through July 1961 were well known in the liquid bleach industry and each such type of promotion had been used at various times by Clorox's competitors. Likewise, each such type of promotion was well known to Clorox's sales executives and advertising agency. There is no evidence that the availability of any "ex-

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* As testified by Nickelson, and as is readily apparent, merchandise which is involved in a promotion and is first shipped from a Clorox plant in July, for example, requires time to reach the grocery shelves and be available to consumers. For this reason, consumer sales of merchandise shipped in July would (to any appreciable extent) be reflected in the Nielsen reports no earlier than the August-September bi-monthly period (Tr. 6292-95).

pertise" or experience possessed by Procter was a factor in the conception or implementation of any such promotion.

[*Comment:* A most cursory examination of the types of promotions used by Clorox, as listed in Commission's Exhibit 718, plainly indicates that each of them was similar to promotions regularly engaged in by producers of all sorts of consumer products. As to the use of such promotions by others in the liquid bleach industry, see citations to the record which are set forth in support of Respondent's Proposed Finding of Fact 103, submitted to the Examiner at the conclusion of the initial hearings.]

31. There is no evidence that any promotion engaged in by Clorox was combined or connected with any promotion involving any product of Procter.

[*Comment:* This was true with respect to promotions considered in the course of the initial hearings. There is no suggestion whatsoever that the same situation does not exist at the present time.]

32. There is no evidence that any promotion engaged in by Clorox from July 1958 through July 31, 1961 was conducted for other than fair and proper business purposes, or that any such promotion was predatory in purpose or effect, or that any such promotion was designed or calculated to impair the ability of Clorox's competitors to compete or enter new markets, or had any such effect.

33. The expenditures by Clorox for promotional activities in the fiscal years 1958-59, 1959-60 and 1960-61 were substantially in line with promotional expenditures programmed for the fiscal year 1957-58. There is no evidence that there is any probability that the amount of such expenditures will be materially increased in the future or that any increased expenditures would be effective.

[*Comment:* As indicated above, total promotional expenditures for the fiscal year ending June 30, 1958 included not only the additionally budgeted amount of $400,000 but also included expenditures for the theretofore established Spring and Fall Housecleaning promotions.]

34. There is no evidence that there is any relationship between Clorox's expenditures for promotions and any changes in Clorox's national market share.

[*Comment:* See our statements in the introduction to this section.]

35. No meaningful conclusions can be drawn respecting the effects of any promotion, as such, whether the promotion was national in scope or confined to a particular area. This is so because no valid comparisons are possible unless there is at least some evidence respecting the competitive activities of others, including advertising and promotion, the tastes of the consuming public in terms of quality, packaging, etc., and various other factors. There is no such evidence in this record.

[*Comment:* We submit that the Examiner's wide experience is such as to make the above finding self-evident.]

36. There is no evidence that the promotions engaged in by Clorox, or any of them, have resulted in any lessening of competition or tendency to monopoly in the liquid bleach industry.

[*Comment:* In the initial hearings there was evidence with respect to the use by Clorox of advertising and promotional campaigns to counter the promotional activities of Purex, Ltd. The Commission in its Opinion noted that only as to one market area, Erie, Pennsylvania, was there any evidence as to the effect of such campaigns on a competitor. It called attention to the complainant's failure to sustain the burden

of its position relative to the effect of promotions in other market areas. That failure is even more evident on the remand. For there is no evidence that any of the promotions engaged in by Clorox since November 1958 have had any effect on particular competitors or on competition generally in any market area.

Actually, later proposed findings relating to the current competitive situation as to Clorox's competitors will demonstrate that their position has relatively improved. Likewise, as shown by our proposed findings heretofore set forth concerning market share, no promotional or other activities have occasioned any substantial change in Clorox's market share position. And as to the year ending July 31, 1961, there has been no gain in the Clorox market share.]

37. As to certain Clorox promotions, which were confined to particular areas of the country, there is no evidence from which can be determined the extent, if any, to which such promotions had any effect upon Clorox's market share or sales or upon the market shares or sales of competitors.

[*Comment:* We maintain that none of the statistical evidence introduced on the remand will permit of any attempted correlation of regional promotional activities and regional market shares or sales.]

D. Findings Respecting Present Economic and Market Position of Clorox's Competitors

The probable substantial lessening of competition with which Section 7 is concerned is not the adverse effect of an acquisition on an individual competitor, but the effect upon competition *in general*. In the following proposed findings, we deal with the record evidence as it relates to the *actual business* which has been and is being done by all of the competitors of Clorox as a group. This avoids the obvious infirmity of basing any conclusion upon the individual

experience of a particular competitor, whose business prosperity may rise or fall depending upon a multitude of reasons.

We note, however, that even as to individual competitors, there is no proof that any one of them has been adversely affected by the acquisition. As previously pointed out, none of the bleach producers in competition with Clorox was called upon to testify in the hearings on remand. Not one of those witnesses who appeared previously was asked to testify as to the effect of the acquisition on his business. The failure to recall any of these witnesses is made understandable by a consideration of the uncontradicted facts supporting the following proposed findings. For they show that the competitors of Clorox are today selling *more bleach for more money* than they have at any time in the history of the industry.

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38. The sales of the competitors of Clorox, as a group, for each of the five years before and the four years after the acquisition, on both a 32-ounce equivalent and a consumer dollar basis, are as follows: [1]

SALES OF ALL LIQUID HOUSEHOLD BLEACHES—OTHER THAN CLOROX

Prior to Acquisition

Year Ended August 1	*32-ounce Equivalent Units*	*Consumer Dollars*
1953	270,011,000	$39,178,000
1954	273,046,000	40,230,000
1955	290,092,000	43,443,000
1956	308,797,000	46,638,000
1957	319,734,000	49,478,000

Record support: [1] RX 137.

Subsequent to Acquisition

1958	329,656,000	$53,910,000
1959	345,726,000	56,287,000
1960	346,038,000	56,197,000
1961	365,354,000	59,254,000

39. In the four years subsequent to the acquisition all bleach producers competing with Clorox for sales of household bleach through grocery stores in the United States sold almost 200,000,000 more 32-ounce equivalent units of household liquid bleach than such producers sold in the four years immediately prior to the acquisition.[1]

Record support: [1] RX 137.

40. During the 12-month period ended August 1, 1961, all bleach producers competing with Clorox for sales of household liquid bleach through grocery stores in the United States sold approximately 45,000,000 more 32-ounce equivalent units of household liquid bleach than such producers sold in the 12 months immediately prior to the acquisition.[1]

Record support: [1] RX 137; Nickelson, Tr. 6312.

41. In the four years subsequent to the acquisition the sales of all bleach producers competing with Clorox for sales of household liquid bleach through grocery stores in the United States were more than $45,000,000 greater than they were in the four years prior to the acquisition.[1]

Record support: [1] RX 137.

42. During the 12-month period ended August 1, 1961, the sales of all bleach producers competing with Clorox for sales of household liquid bleach through grocery stores in the United States were approximately $10,000,000

greater than they were in the 12-month period immediately prior to the acquisition.[1]

Record support: [1] RX 137; Nickelson, Tr. 6312.

43. During the 12-month-period ended August 1, 1961, all bleach producers competing with Clorox for sales of household liquid bleach through grocery stores in the United States sold over 19,000,000 32-ounce equivalent units of household liquid bleach more than they did in the preceding 12-month period ended August 1, 1960.[1]

Record support: [1] RX 137; Nickelson, Tr. 6314.

44. During the 12-month period ended August 1, 1961, the sales of all bleach producers competing with Clorox for sales of household liquid bleach through grocery stores in the United States were more than $3,000,000 greater than they were in the preceding 12-month period ended August 1, 1960.[1]

Record support: [1] RX 137; Nickelson, Tr. 6314.

45. The competitors of Clorox in each year since the acquisition have sold more liquid bleach for more money than they did in any year prior to the acquisition.[1]

Record support: [1] RX 137; Nickelson, Tr. 6314-15.

46. In the 12-month period ended August 1, 1961, the competitors of Clorox sold more bleach for more money than they had sold at any time previously in the history of the liquid bleach industry.[1]

Record support: [1] RX 137; Nickelson, Tr. 6315.

The effect of gauging the results of a conglomerate acquisition by factual hindsight rather than conjecture and prophecy is evidenced by the proposed findings in this section. They demonstrate the infirmities in relying upon the expressed concern of competitors as to the future of

their respective companies when faced with competition from Clorox under Procter ownership. Although unjustified, their concern may be understandable because any manufacturer naturally views with uncertainty and, in most cases, alarm, any action of any kind by one of his substantial competitors. But "hindsight" has shown the groundless basis for their fears.

The Examiner in the initial hearings, very understandably, was impressed by these expressions of concern. For, at the close of the previous hearings, there was little evidence to disprove these "guesses" concerning the future effect of the acquisition on competition. The record on remand now permits an informed judgment based upon four years of Clorox operations under Procter's ownership. That record shows that the "conjectures" and prophecies of the competitors of Clorox had no basis in fact. That record also shows that the current sales position of these competitors as a group has substantially improved since the acquisition.

The foregoing findings in this section also clearly support and warrant the following proposed findings.

47. The acquisition of Clorox by Procter has not had and there is no reasonable probability that it will have any adverse effect upon the bleach industry or upon the market position or competitive ability of other bleach producers in competition with Clorox.

48. The acquisition has not resulted in, and there is no reasonable probability that it will result in, any lessening of competition or tendency to monopoly.

[*Comment:* We submit the two foregoing proposed findings with the observation that the evidence now before the Examiner plainly requires their adoption.

We submit that, particularly in a conglomerate merger case, it would be paradoxical—indeed unthink-

able—that there could be a finding that there has been, or *probably* would be, any substantial lessening of competition in an industry in which competitors have steadily and markedly increased the volume and dollar amount of their sales since an acquisition.]

E. Conclusory Findings Based Upon the Entire Record, and Reflecting the Commission's Opinion

As heretofore noted, the Commission's Order concluded with the direction that a new initial decision be filed on the basis of the entire record herein.

We construe this to mean that the Examiner should relate the evidence after the remand to what the Commission has said respecting the record as it existed before the remand. Or stated differently, that the Examiner should recast the findings which were controlling in his Initial Decision so as to reflect the entire record.

In our view this does not require any complete set of new findings. The effect of adopting the findings which we are here proposing does not mean that certain of the initial *factual* findings made by the Examiner are wrong. It does mean that such facts, when considered in the light of informed hindsight, do not now establish a violation of Section 7. It also means that they certainly do not now support in any way a finding that there was or is a reasonable probability of an adverse effect on competition as a result of the acquisition.

In line with these views, we here submit the following proposed findings and conclusions, which modify the conclusory findings contained at the end of the Examiner's Initial Decision.

---

49. There is no proof that one of the results of the acquisition of Clorox Chemical by the respondent "probably" would be the substantial lessening of competition be-

tween the respondent-owned Clorox and the smaller manufacturers and distributors of household liquid bleach, or would result in any "definite tendency" to create a monopoly in the household bleach industry, in violation of Section 7 of the Clayton Act.

50. There is no proof that Procter's financial and economic strength, or advertising and promotional experience, or ability to acquire and retain shelf space have enhanced, in any substantial respect, the capacity of Clorox Chemical Company to compete in the liquid bleach field, or have been or will be utilized in any substantial way in the manufacture, distribution or marketing of Clorox liquid bleach.

51. There is no proof that the competitive position or market share of Clorox under respondent's control in the production and sale of household liquid bleach has been substantially enhanced over such position or market share prior to the acquisition, nor is there any evidence that any change in such position or market share has been to the detriment of actual or potential competition.

52. There is no proof that there is any increasing tendency of concentration of competitors in the household liquid bleach industry.

53. There is no proof that Clorox, through P & G advertising and sales promotion methods or devices or otherwise, has prevented, or has the ability to prevent, the entry of additional competitors into the household liquid bleach industry or has prevented, or has the ability to prevent, the competitors it already has from expanding by normal methods of competition.

54. There is no proof that the "fears" reflected in the testimony of officials of competing manufacturers and distributors of household liquid bleach as to the results of the acquisition were "well founded" or that the acquisition has resulted or will result in any injury to their businesses.

55. There is no proof that since November 1958 The Clorox Company has used any "retaliatory tactics" in meeting sales promotions or test marketing of its smaller competitors.

56. Such evidence, as was in the record before the remand which the Examiner construed as giving rise to inferences that a lessening of competition might occur, is rebutted by the objective evidence as to the competitive situation four years after the acquisition, and such objective evidence compels the conclusion that the acquisition by Procter of Clorox Chemical Company has not resulted and will not probably result in any lessening of competition or tendency to monopoly in the liquid bleach industry—either nationally or in any section of the country.

57. By reason of all of the foregoing, the acquisition of Clorox Chemical by Procter does not violate the provisions of Section 7 of the Clayton Act and the complaint should be dismissed.

Respectfully submitted,

KENNETH C. ROYALL,
FREDERICK W. R. PRIDE,
ROBERT D. LARSEN,
Attorneys for Respondent, The Procter & Gamble Company

RICHARD W. BARRETT,
RICHARD W. TODD,
DINSMORE, SHOHL, BARRETT, COATES & DEUPREE
12th Floor Union Central Building
Cincinnati 2, Ohio.

ROYALL, KOEGEL, HARRIS & CASKEY
1730 K Street, N. W.
Washington 6, D. C.
Of Counsel

Dated: January 15, 1962

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[Caption Omitted]

SECOND INITIAL DECISION

(Filed February 28, 1962)

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Preliminary Statement

[Caption Omitted]

SECOND INITIAL DECISION

Everett F. Haycraft, Hearing Examiner.

J. Wallace Adair and V. Rock Grundman, Jr.,
Attorneys for the Commission.

Kenneth C. Royall, Frederick W. R. Pride and
Robert D. Larsen of
Royall, Koegel, Harris & Caskey, Washington, D. C.,
Attorneys for the Respondent.

PRELIMINARY STATEMENT

A. THE PLEADINGS AND PROCEEDINGS.

The Commission, on September 30, 1957, issued a complaint against The Procter & Gamble Company, an Ohio corporation, sometimes hereinafter referred to as P & G, with its principal office and place of business located in Cincinnati, Ohio, charging it with violation of Section 7 of the Clayton Act, as amended December 29, 1950, through the acquisition on August 1, 1957, of the assets, trademarks, business and goodwill of the Clorox Chemical Company, a Delaware corporation, sometimes hereinafter referred to as Clorox Chemical, with its principal office and place of business located in Oakland, California.

Specifically, the complaint alleges that the effect of the acquisition of the assets and business of Clorox Chemical, "may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of household liquid bleaches in the United States and in each of them."

More specifically it is alleged that the effect of the acquisition was the actual or potential lessening of com-

petition and a tendency to create a monopoly in the following ways, among others:

1. In the production and sale of household liquid bleach.

2. The elimination of Clorox Chemical as an independent, competitive factor in the household liquid bleach industry.

3. Household liquid bleach producers may be unable to compete with the respondent due to one or more of the following:

"a. Respondent's market position.

b. Respondent's financial and economic strength.

c. Respondent's advertising ability and experience.

d. Respondent's merchandising and promotional ability and experience.

e. Respondent's 'full line' of cleansing and laundry products.

f. Respondent's ability to command consumer acceptance of its products and of valuable grocery store shelf space.

g. Respondent's ability to concentrate on one of its products, or on one selected section of the country, the full impact of its advertising, promotional, and merchandising experience and ability."

4. Enhancement of respondent's competitive position in the production and sale of household liquid bleach to the detriment of actual and potential competition.

5. The industry-wide concentration of the production and sale of household liquid bleach may be increased.

6. The respondent is given the facilities, the market position and the "dominant ability" to monopolize, or tend to monopolize, the household liquid bleach market.

Preliminary Statement

In its answer, filed November 4, 1957, respondent denied all charges of illegality contained in the complaint.

The taking of evidence commenced in Cincinnati, Ohio, on December 16, 1957. Additional hearings were held in San Francisco, Los Angeles, Chicago, Philadelphia, New York, Boston, Buffalo, Detroit, and Washington, D. C., at which testimony was taken in support of the allegations of the complaint. Counsel in support of the complaint closed their case in chief on August 26, 1958.

Counsel for respondent presented evidence in opposition to the allegations of the complaint at hearings held in Washington, D. C., on November 17-26, 1958, and January 5-9, 1959.

Rebuttal testimony was received in Washington, D. C., commencing January 26, 1959. The hearings were concluded on February 12, 1959, when each party stipulated that its case was closed. Proposed findings were filed by the opposing parties in May 1959, and oral argument was held on June 16, 1959. Numerous briefs have been filed both before and after the oral argument, the last one having been filed in November 1959. The record consists of approximately 6,300 pages of transcript and several hundred exhibits, many of which consist of several pages.

Consideration having been given to the proposed findings and all the reliable, probative and substantial evidence in the record upon all material issues of fact, law or discretion, the examiner was of the opinion that the material allegations of the complaint had been proven by substantial and reliable evidence, and that the Commission should take remedial action in the premises. Appropriate findings as to the facts, conclusions and order of divestiture were issued by the examiner on June 17, 1960.

Thereafter, an appeal was taken to the Commission from the initial decision and oral argument was had before the

Commission. On June 15, 1961, the Commisison entered an order remanding the proceeding to the hearing examiner for the reception of such further evidence concerning the competitive effects of the aforementioned acquisition as may be offered in conformity with the views expressed in the accompanying opinion of the Commission. It was further ordered that after the receipt of such additional evidence, the hearing examiner should make and file a new initial decision on the basis of the entire record. The following statement was made in the order as the basis for the remand:

> "The Commission having determined that the record as presently constituted does not provide an adequate basis for informed determinations as to the actual or probable effects of respondent's acquisition of Clorox Chemical Co. on competition in the production and sale of household liquid bleach, and being of the opinion that the record should be supplemented in this respect to the end that all of the issues involved in the case may be finally and conclusively disposed of on their merits;"

In the course of the opinion, the following appears as further indication of the extent of the remand:

> "The case will, therefore, be remanded to the hearing examiner for the reception of evidence relating to the competitive situation as it presently exists in the liquid bleach industry. This evidence should relate to events occurring subsequent to November 1958, and should include market share data in each of the geographical regions specified on page 17 of the initial decision, as well as information directed to more clearly delineating the production and merchandising facilities and techniques which have been utilized by Clorox under the control of respondent."

Preliminary Statement

Pursuant to the foregoing order of the Commission, hearings were held in Washington, D. C., on December 1, 1961, for the purpose of taking testimony and other evidence submitted by counsel in support of the complaint, and on December 12, 1961, at which testimony and other evidence was received in opposition to testimony presented by counsel in support of the complaint on December 1, 1961. At the December 12 hearing, both counsel rested and the hearing examiner closed the taking of testimony and allowed both counsel until January 15, 1962, within which to file proposed findings based on the testimony and evidence submitted at these hearings and both counsel were also allowed until February 1, 1962, within which to file reply, if desired.

B. STATEMENT OF THE ISSUES AND OPINION.

Section 7 of the Clayton Act, as amended December 29, 1950, provides in part as follows:

> "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of any such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

The House Report accompanying the bill amending Section 7, as above, stated:

> "Under (Section 7) a merger or acquisition will be unlawful if it may have the effect of either (a) substantially lessening competition, or (b) tending to

create a monopoly. These two tests of illegality are intended to be similar to those which the courts have applied in interpreting the same language as used in other sections of the Clayton Act. Thus, it would be unnecessary for the Government to speculate as to what is in the 'back of the minds' of those who promote a merger; or to prove that the acquiring firm had engaged in actions which are considered unethical or predatory; or to show that as a result of a merger the acquiring firm had already obtained such a degree of control that it possessed the power to destroy or exclude competitors or fix prices." [1]

It will be noted from the foregoing that among the first things to be determined in this case, and the necessary issues, are:

1. The Statutory "Line of Commerce" involved in the transaction.
2. The Statutory "Section of the Country" involved in the transaction.
3. The effect on competition in such "Line of Commerce" and/or such "Section of the Country."

   a. Does the acquisition tend to substantially lessen competition, or
   b. Tend to create a monopoly in the line of commerce or section of the country where the respondent and the acquired corporation are engaged in business.

In the Senate report accompanying the amendment to Section 7 of the Clayton Act in 1950, the following language is found:

"What constitutes a section (of the country) will vary with the *nature of the product.** Owing to the dif-

[1] H. R. Report No. 1191 of 81st Congress, 1st Session, Page 8.
* Emphasis supplied.

ference in size and character of markets, it would be meaningless, from an economic point of view, to attempt to apply for all products a uniform definition of section, whether such a definition was based on miles, population, income, or any other unit of measurement. A section which would be economically significant for a heavy, durable product, such as large machine tools, might well be meaningless for a light product such as milk, and

. . . "Hence, an acquisition is not to be interpreted merely in terms of either its effect on competition or its tendency to create a monopoly *'in the Nation as a whole'.** The act is to be violated if, as a result of the acquisition, there would be a substantial lessening of competition or a tendency to create a monopoly *in any section of the country."* [1] *

Another issue is whether or not the acquisition involved in this case, a so-called conglomerate merger, comes within the language of the statute, since there was no competition between P & G and Clorox Chemical prior to the acquisition. The House Report (supra) states as follows:

"Because Section 7, as passed in 1914, prohibited, among other things, acquisitions which substantially lessened competition between the acquiring and acquired firms, it has been thought by some that this legislation applies only to the so-called horizontal mergers. But in the proposed bill, as has been pointed out above, the test of the effect on competition between the acquiring and the acquired firm has been eliminated. One reason for this action was to make it clear that this bill is not intended to prohibit all acquisitions among competitors. *But there is a second reason, which is to make it clear that the bill applies to all types of mergers and acquisitions, vertical and con-*

[1] Senate Report 1775, 81st Congress, 2nd Session, Pages 5 and 6.

* Emphasis supplied.

glomerate as well as horizontal, which have the specified effects of substantially lessening competition . . . or tending to create a monopoly." [1] *

Consideration has been given to the proposed findings and all the reliable probative and substantial evidence in the record upon all material issues of fact, law or discretion, including the evidence received at hearings held pursuant to the Commission's order of June 15, 1961 remanding the proceeding to the Hearing Examiner for the taking of additional evidence. Each of those proposed findings which has been accepted, has been, in substance, incorporated into this initial decision. All proposed findings not so incorporated are hereby rejected.

The examiner is of the opinion that the material allegations of the complaint have been proven by substantial and reliable evidence and that the Commission should take remedial action in the premises. Appropriate Findings as to the Facts, Conclusions and Order of Divestiture are hereinafter set forth.

FINDINGS AS TO THE FACTS

I. Description of the Respondent and the Industries In Which It Was Engaged In 1957.

Respondent P & G and various of its subsidiaries in 1957 were engaged principally in the manufacture and sale in interstate commerce of soaps, synthetic detergents and cleansers. It also manufactured and sold some food products, including meat food products, paper products, shampoos, dentifrices and home permanents. P & G was, and now is, the largest producer in the United States of soap and synthetic detergent products, and one of the major

[1] Ibid, Page 11.
* Emphasis supplied.

producers in its other principal product fields. The more important consumer household brands manufactured by P & G and its subsidiaries are sold to retail and wholesale grocery and drug outlets, department stores and variety stores. P & G was, and now is, one of the leading national advertisers in the United States and expends large sums of money in advertising and promoting many of its products in the household soap, detergent, food and toilet goods fields. P & G's overall expenditures for advertising in the United States of approximately thirty-five products manufactured by it and sold under its brand names were somewhat in excess of $79,000,000 for its fiscal year ended June 30, 1957. There is no evidence in the record relating to P & G advertising expenditures subsequent to that date.

As of June 30, 1957, P & G had total assets of $688,272,623 and total capital and retained earnings of $462,097,281. For the fiscal year 1957, consolidated net sales amounted to $1,156,389,726, and consolidated net earnings were $67,807,376.

As of June 30, 1961, P & G had total assets of $1,022,525,434 and total capital and retained earnings of $677,686,077. For the fiscal year 1961, consolidated net sales amounted to $1,541,904,779, and consolidated net earnings were $106,632,804.

Since 1946, P & G's net sales have increased approximately 400%, and total assets have increased more than 400%. A large percentage of this growth is attributable to the development of new products. For instance, it has developed and brought on the market a new detergent, a new deodorant toilet soap bar, two new brands of toothpaste, and an abrasive cleanser, all of which have proved very popular. P & G's president testified that approximately 70% of P & G's household product volume comes from products not in existence in 1946.

P & G has also grown by acquiring going businesses and, in so doing, entered new fields and diversified its operations. For instance, in August 1955 P & G acquired S. T. Young Foods, Incorporated, which manufactured peanut butter; in August 1956 P & G acquired the Duncan Hines prepared cake mixes from Nebraska Consolidated Mills, Incorporated, of Omaha; and in January 1957 it acquired Charmin Paper Mills, Incorporated, manufacturer of paper products.

The Duncan Hines and Charmin products were added to the P & G list of consumer brands during the fiscal year ended June 30, 1957. In P & G's annual report of 1957 the following statement appears:

> "Procter & Gamble's technical knowledge and manufacturing experience fit very well into the development and production of these types of products. In addition, both prepared mixes and paper tissue products are low priced, rapid turn-over, household items sold primarily through grocery, drug and department stores —the type of goods which the company is accustomed to market."

A further explanation is made of such acquisitions in the following language by the P & G Board Chairman:

> "Since our recent purchase of the Duncan Hines Cake Mix business, and our interest in the paper products field, it would be natural for any shareholder to ask, 'Why do we go into businesses like cake and other flour and shortening mixes, peanut butter and paper tissues?' Our answer would be simply that we feel *our experience and marketing skill* qualify us carefully to diversify our operations, and that by choosing subsidiaries well and applying Procter & Gamble's merchandising methods to related consumer products busi-

nesses, we add to the stability and profits of the business." *

The Executive Vice President of P & G at the time of the acquisition of Clorox Chemical, in a press release, stated:

> "While this is a completely new business for us, taking us for the first time into the marketing of a household bleach and disinfectant, *we are thoroughly at home in the field of manufacturing and marketing low priced, rapid turn-over consumer products.*" *

II. The Clorox Chemical Company.

The Clorox Chemical Company was, prior to August 1, 1957, a Delaware Corporation, with its office and principal place of business in Oakland, California, and was engaged in the production and sale in interstate commerce of 5¼% sodium hypochlorite liquid bleach and disinfectant under the trade name of "Clorox." At that time, and certainly since 1952, Clorox Chemical was the largest producer of household liquid bleach in the United States. It had thirteen plants for the manufacture and bottling of household liquid bleach, located at Atlanta, Georgia; Boston, Massachusetts; Camden, New Jersey; Charlotte, North Carolina; Chicago, Illinois; Cleveland, Ohio; Houston, Texas; Jersey City, New Jersey; Kansas City, Missouri; Los Angeles, California; Oakland, California; Seattle, Washington; and Tampa, Florida.

Net sales and net income of Clorox Chemical for the fiscal years ending June 30, 1952, through June 30, 1957 were as follows:

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* Emphasis supplied.

Findings As to the Facts

Net Sales		*Net Income*	
1952	$23,625,026	1952	$1,255,005
1953	$27,714,435	1953	$1,348,618
1954	$30,284,650	1954	$1,343,511
1955	$33,874,181	1955	$2,041,251
1956	$36,409,197	1956	$2,032,861
1957	$39,999,114	1957	$2,569,166

As of June 30, 1957, Clorox Chemical had total assets of $12,629,425 and an earned surplus of $7,127,015.

The foregoing net sales figures represent almost entirely sales of household liquid bleach which, with the exception of a small amount of industrial bleach, has always been Clorox Chemical's only product.

It will be seen from the foregoing table that the net sales of Clorox Chemical reflect a steady, continuous and substantial growth in each of the fiscal years from June 30, 1952, through June 30, 1957.

In each of the years during the period from August 1, 1952, through July 31, 1957, there was also a steady and continuous growth in Clorox Chemical's market share of all household liquid bleach sold in the United States through grocery stores. Such market shares were as follows:

Year Ending July 31	*Clorox Brand Share*
1953	45.3%
1954	46.4%
1955	47.1%
1956	47.8%
1957	48.4%

Clorox Chemical sold its product through approximately 80 distributors, acting as principals, to the grocery trade —shipments being made direct to the retail customer as well as to the distributor, with the freight paid by Clorox Chemical.

Findings As to the Facts

Clorox Chemical's success in the household liquid bleach industry had been achieved through extensive national advertising which had made the name Clorox well-known and accepted in American households as a quality product at a reasonable price.

The record indicates that Clorox Chemical was generally considered the price leader in the household liquid bleach industry. While a few brands, such as Purex, Linco, Prescott, 101, Hilex, and Roman Cleanser, sold at substantially the same premium price as Clorox, most of the brands manufactured by regional manufacturers sold for less than Clorox. Most private label and local brands generally sold for even lower prices. There is evidence that in a few isolated regional situations, certain competitive bleaches have been sold at a higher price than Clorox.

Clorox Chemical spent approximately $1,750,000 for newspaper advertising, $560,000 for magazine advertising, $1,150,000 for television, $113,000 for radio, and $145,000 for billboard advertising during the fiscal year ended June 30, 1957. It began to use TV spot advertising in July 1956, which was intended to add "extra impact to the tremendous selling support provided by Clorox national advertising."

During the period 1952 through July 31, 1957, Clorox Chemical had utilized no so-called consumer promotional devices or methods, such as the distribution of price-off coupons, free samples, premiums, contests or tie-in sales, although many of its competitors had utilized some or all of these devices.

Clorox Chemical commenced to use what is known as special spring and fall housecleaning campaigns in 1956. These campaigns were directed primarily to the grocer and offered nothing special to the consumer. These campaigns

lasted approximately six weeks, the spring campaign beginning in March, and the fall campaign in September. They were continued during 1957, the fall campaign being announced in a letter to the trade dated July 31, 1957, just prior to its acquisition by P & G.

III. The Acquisition of Clorox Chemical.

Respondent considered entering the household liquid bleach market by purchasing the Clorox Chemical Company approximately two years prior to the date of acquisition. In a confidential study of that market, by employees of respondent P & G in October, 1955, it was reported that liquid bleaches would continue to dominate the market volumewise since they were by far the most economical for the consumer to use. It was believed at that time that the household liquid bleach market would continue to grow for the following reasons:

"a. 75% of the homes now use a bleach.
b. Younger women bleach more than do older women.
c. Automatic washing machine homes use more bleach than do conventional washing machine homes."

It was estimated in this report that the total household liquid bleach market in 1955 amounted to about 44,000,000 (3-gallon case) cases, and the market was divided as follows:

"Clorox (National) 44%
Purex (Sectional) 16%
All others . 40%"

This report, which was prepared by a man in the promotional department of respondent, recommended that the company should acquire the Clorox business rather than

try to enter the market by introducing a new brand, or by trying to expand a sectional brand. This was because it was felt that the latter course would require "a very heavy investment" to achieve a major volume in the field. It was recommended that:

> "taking over the Clorox business, however, could be a way of achieving a dominant position in the liquid bleach market quickly which would pay out reasonably well."

The report contained a history of the net sales and earnings of Clorox Chemical with the following comment:

> "We understand that Clorox sells through a broker-jobber setup, and that while they are No. 1 nationally, there are many important markets where their share of the bleach market is quite low. We feel that with our sales, distribution and manufacturing setup, we could effect a number of savings that could possibly increase the net profit of their business considerably —say to a net profit of $3,000,000 on net sales of $33,000,000."

In a later report by another member of the promotional department of respondent P & G, dated February 28, 1957, it was definitely recommended that P & G purchase the Clorox Chemical Company at a price of approximately $30,000,000 of P & G stock. Among the reasons for recommending the purchase were the following:

First, the total bleach market was then a *"large and expanding one."* Liquid bleaches account for approximately 95% of the total volume, and it was believed that the bleach market would continue to grow for the same reasons assigned in the previous 1955 report hereinbefore mentioned.

Second, Clorox was the nation's dominant bleach brand, with a total market share, reported by Neilson, in excess of 42%, or approximately half of the total household liquid bleach market.

Third, it was unlikely that the growth of dry bleaches would cut into the liquid bleach volume for many years to come.

Other factors taken into consideration were as follows:

> "We are advised that Clorox spent $2,660,000 in the last half of 1956 for advertising, or at the rate of $5,320,000 a year. We believe that *P & G advertising philosophies and economies* applied to an advertising expenditure of this size can be expected to further advance the Clorox business.*
>
> "It is conceivable that the profitability of the Clorox business may be improved. Recognizing that Procter & Gamble overhead charges, if applied to the Clorox P & L statement, might appear to reduce the profitability or at least to off-set any economies under P & G operation, there remains such possibilities as a 5 cent to 10 cent increase in the price per case (using Clorox 12 quart case as a base), which could conceivably be accomplished without an increase in the retail price, thereby expanding profit.
>
> "We may be able to derive additional value from the Clorox name for other new and related products, which may not perhaps be measurable in exact dollars, but should nevertheless be considered a value returned on the investment."

Pursuant to an agreement dated May 28, 1957, between Clorox Chemical and P & G, Clorox Chemical agreed to exchange and transfer substantially all of its assets and business as a going concern to P & G on the terms, con-

* Emphasis supplied.

ditions and provisions set forth in said agreement, which provided, among other things, that the closing of such exchange and transfer, subject to prior approval by Clorox Chemical stockholders, would be August 1, 1957.

To implement the transaction, P & G caused a wholly owned subsidiary named The Clorox Company to be incorporated under the laws of the State of Ohio. On August 1, 1957, this subsidiary, pursuant to the plan of reorganization set forth in the said agreement, exchanged 639,578 shares of P & G's fully paid and non-assessable two-dollar par value common stock (about 3.1% of the issued and outstanding stock) for substantially all of the assets and business of Clorox Chemical as a going concern. Clorox Chemical was then dissolved and the P & G stock received by it was distributed among Clorox Chemical's stockholders. The market value of the P & G stock exchanged was approximately $30,000,000.

IV. Household Liquid Bleach Is The Line of Commerce In This Proceeding.

The product involved in this case is household liquid bleach, which quite uniformally consists of 5¼% sodium hypochlorite solution with 94¾% water. It is either manufactured from basic chemicals (chlorine and caustic soda) or it is converted by the producer from bleach concentrate by the addition of water.

Household liquid bleach is used by the housewife principally in the laundry as an adjunct to soaps and detergents to bleach cottons and fine fabrics. It is also used extensively as a germicide, to disinfect garbage cans, toilets, kitchen sinks, etc.

It is sold principally through grocery stores, in various sized glass containers, including pint, quart, half gallon

and gallon bottles, packed in cases as follows: 24 pints, 12 quarts, 6 half gallons, and 4 gallons to a case, respectively.

It is contended by the respondent that the line of commerce involved in this proceeding should include dry bleach as well as liquid bleach, asserting that approximately 10% of the total household bleach market consists of dry bleach.

Dry bleach is not competitive with liquid bleach because, among other reasons, it has differing functional uses. Liquid bleaches are quicker and more thorough than dry bleaches, and they are considered more in the heavy duty category, while dry bleaches are in the light duty area. In addition, dry bleach is more expensive to use, is much less effective than liquid bleach for laundry purposes, and accounts for only about 5% of all laundry functions.

Clorox Chemical did not manufacture dry bleach, and the evidence indicates that dry bleach will not materially cut into the liquid bleach market in the forseeable future or ever replace liquid bleach in the home.

It is, therefore, found that the line of commerce in this case is household liquid bleach.

V. The Sections of the Country and Competitors In Each Section.

A. The Sections of the Country Involved Herein.

There is a national market for household liquid bleach in the sense that it is universally sold throughout the United States in grocery and drug stores. However, this national market is made up of a series of regional and local markets, the geographical confines of which cannot be fixed with any exactitude. There are in the household liquid bleach industry a substantial number of small producers which are located and sell in various local or re-

gional areas. The weight of household liquid bleach, packed in cases of glass or plastic containers for shipment, results in high freight costs, and necessarily restricts the region served by any one production facility. In the main, each producer markets its products in the region in which it has manufacturing facilities, and which it considers can be economically served by such facilities. In consequence, different competitive factors and conditions are to be found to some degree in each regional market.

Clorox Chemical was the only household liquid bleach manufacturer which sold its product throughout the United States. Purex Ltd., the second largest household liquid bleach producer, marketed its brand in areas of the United States containing approximately 48% of the population at the time of the acquisition of Clorox Chemical by P & G. In October 1958, Purex acquired the plants of John Buhl Products Company, a subsidiary of Sterling Drug, Inc., manufacturing and selling a brand of household liquid bleach known as "Fleecy-White," and, as a result, Purex now markets household liquid bleach in areas of the United States containing approximately 64% of the population. With the possible exception of one or two other producers, all of the other members of the industry sold only in smaller regional or local areas.

In all but two of those regional areas, Clorox Chemical, prior to the acquisition by P & G, was a strong competitive factor. However, in two of the regional areas one of the competitive manufacturers occupied a market position comparable to that of Clorox Chemical in the sale of household liquid bleach.

B. THE PRINCIPAL COMPETITORS IN EACH SECTION.

There is some conflicting testimony as to the actual number of household liquid bleach manufacturers in the United

States. It was estimated by the president of respondent that there were between 100 and 200 such liquid bleach manufacturers. The president of Purex estimated there were approximately 40 to 50 such manufacturers who sell their products under their own label to grocery stores in competition with Clorox liquid bleach. The December 1955 edition of the Thomas Register of American Manufacturers contains the names of 20 companies known as liquid bleach manufacturers that were competitors of Clorox Chemical.

The following household liquid bleach manufacturers were the principal competitors of Clorox Chemical at the time of the acquisition:

1. *Purex Chemical Company*, hereinbefore mentioned, which had the largest distribution of household liquid bleach of any manufacturer except Clorox Chemical, sold its said product to customers in areas west of the Mississippi River and south of the Ohio River, plus portions of Wisconsin, Southern Illinois, and Southern Indiana. It did not sell in Pennsylvania, West Virginia, Virginia, the Carolinas, or Southern Florida. Since its acquisition in 1958 of the John Buhl Products Company, the manufacturer of "Fleecy-White" brand of household liquid bleach, it has added to its sales territory most of Virginia, West Virginia, Ohio, North Carolina, and parts of Michigan and Wisconsin.

2. *Roman Cleanser Company*, located in Detroit, Michigan, sold its household liquid bleach from its plants in Detroit; Griffin, Georgia; Tampa and Miami, Florida. Deliveries were made to customers located within a radius of about 150 miles of each plant. The territory generally covered by such sales are the States of Michigan, Ohio, part of Pennsylvania, parts of Indiana, Illinois, Georgia, Florida, and very little in Virginia and West Virginia.

3. *Linco Products Corporation*, sold its household liquid bleach principally to customers in and around the City of Chicago where its factory is located. Its sales territory also included the States of Illinois, Indiana, Michigan, Wisconsin, and parts of Iowa and Ohio.

4. *The Hood Chemical Company*, with its principal place of business in Ardmore, Pennsylvania, sold its household liquid bleach produced at its plants in South Plainfield, New Jersey; Charlotte, North Carolina; Jacksonville, Florida; and Lisbon, Ohio, to customers in the sales areas surrounding the Cities of Philadelphia and Pittsburgh, Pennsylvania, the States of Florida, North Carolina, and South Carolina.

5. *Rose-Lux Chemical Company*, sold its household liquid bleach under the trade name or brand "Rose-X," manufactured in its factory located in Brooklyn, New York, to customers in the metropolitan area of New York City, including two counties in New Jersey, and one county in Connecticut.

6. *The J. L. Prescott Company*, with its factory located in Passaic, New Jersey, sold its "Dazzle" brand of household liquid bleach to customers in the States of Massachusetts, Connecticut, Rhode Island, and portions of Maine, New Hamsphire, New Jersey, New York, Pennsylvania, and Maryland.

7. *The Savol Bleach Company*, from its factory in East Hartford, Connecticut, sold its household liquid bleach to customers located within a radius of 35 miles around Hartford.

8. *The Gardiner Manufacturing Company* sold its household liquid bleach "101" brand from its plant located in Buffalo, New York, to customers in western New

York and western Pennsylvania, which included Erie and Bradford, Pennsylvania, Olean, Rochester, and Niagara Falls, New York, and points between those areas.

9. *The John Buhl Products Company*, hereinbefore mentioned, sold its "Fleecy-White" brand of household liquid bleach to customers in and around the City of Chicago, Illinois, where its factory was located, and in parts of Wisconsin, Michigan, Ohio, Iowa, Illinois, Indiana, West Virginia, Virginia, and North Carolina; and also in some portions of Kentucky, Tennessee, Alabama, Georgia, Texas, and Louisiana.

10. *Jones Chemicals, Incorporated*, sold its household liquid bleach under the trade name "Sunny Sol" from its factory in Caledonia, New York, to chain stores and jobbers in Utica, Binghamton, Norwich, and Albany, New York, and under the same trademark, it sold in bulk to franchised distributors in Buffalo, Rochester, Syracuse, Elmira, New York, and in Erie, Pennsylvania, who in turn sold to retailers in those areas.

11. *Lady's Choice Foods*, a corporation with plants located in San Francisco and Los Angeles, California, manufactured and sold household liquid bleach under the trade names "Saniclor" and "Hypro" to customers throughout the State of California, and portions of Arizona and Nevada.

12. *The No-Worry Chemical Company* manufactured a household liquid bleach at its factory in Newark, New Jersey, and sold it to customers in Essex and Hudson Counties, New Jersey, under the trade name "No Worry Bleach."

13. *B. T. Babbitt, Inc.*, whose principal household product is "Bab-O" also, since 1956 when it acquired Chemi-

cals, Inc., manufactured household liquid bleach at its factory in Oakland, California, under the trade name "Vano," which it sold to customers in the immediate area around San Francisco and Oakland, California.

14. *The Hilex Liquid Bleach Company*, with its factory located in Minneapolis, Minnesota, sold household liquid bleach to customers in the States of Minnesota, North and South Dakota, and part of Colorado.

15. *The Texize Chemical Company* is listed in Dun & Bradstreet as a manufacturer of household bleach having a financial strength of more than $1,000,000. It is located in Greenville, South Carolina, and apparently sold its products in that general area, although the record does not contain detailed information with respect to the business of this company. It is of sufficient importance, however, that the Nielsen Food Index includes it in household liquid bleach market studies that have been made.

In addition to the foregoing-named manufacturers, the record contains evidence of another local company in New England, the Sunlight Chemical Corp., of East Providence, Rhode Island, engaged in the manufacture of a line of chemicals for household cleaning and laundry in the home, including a household liquid bleach.

From the foregoing facts, it is found that the sections of the country involved in this case are the United States as a whole, as well as those local and regional markets within the United States where Clorox is sold in substantial competition with one or more other household liquid bleach producers, and as recognized by the A. C. Nielsen Company Marketing Service to be as follows: New England, Metropolitan New York City, Middle Atlantic, East Central, Metropolitan Chicago, West Central, Southeast, Southwest, and Pacific.

Findings As to the Facts

VI. Clorox's Share of the Household Liquid Bleach Market in the United States and in Certain Sections of the Country at the Time of the Acquisition and as of June-July 1961.

The following Table I sets forth the market share of various brands of household liquid bleach, on a consumer dollar basis, for the United States as a whole, and for certain regions such as New England, Metropolitan New York, Middle Atlantic, etc., as reported by the A. C. Nielsen Company in its bi-monthly reports covering the two-month periods June-July 1957 and June-July 1961.

It will be noted from the foregoing table that the sales of Clorox, during the period June-July 1957 represented 48.8% of the total sales of household liquid bleach in the United States, and that such sales had increased to 51.5% during the period of June-July 1961. It will also be noted that Clorox's nearest competitor, Purex, which ranked second in sales nationally with a market share of approximately 15.7% in the June-July 1957 period, decreased to approximately 14.2% in the June-July 1961 period, and that although Purex acquired the fourth ranking competitor, "Fleecy-White" in October 1958, the combined sales of Purex and "Fleecy-White" in 1961, which amounted to approximately 18.2% of the national market, represented barely one-third of the amount of household liquid bleach sold by Clorox during that period. The third largest seller of household liquid bleach, Roman Cleanser, whose sales of this product in the 1957 period represented approximately 5.9% of the national market, had decreased to approximately 4.1% in the 1961 period; such sales amounting to less than one-tenth of Clorox's sales during this latter period. The fifth ranking brand in 1957, Hilex, with approximately 3.3% of the national market was not shown

TABLE I

MARKET SHARES
BI-MONTHLY PERIODS, JUNE-JULY 1957 & JUNE-JULY 1961
PERCENT OF TOTAL SALES, LIQUID BLEACH ON CONSUMER DOLLAR BASIS

		Clorox	Purex	Fleecy White	Purex & Fleecy White [1]	Hilex	Linco	Roman Cleanser	Sani-Clor	Texize	All Others [2]
Total United States	1957	48.8	15.7	4.0	19.7	3.3	2.1	5.9	0.8	0.5	18.9
	1961	51.5	14.2	4.0	18.2	[2]	1.5	4.1	[2]	1.1	23.6
New England	1957	56.0	...	...	...	...	...	...	...	...	44.0
	1961	67.5	...	...	...	[2]	...	...	[2]	...	32.5
Metropolitan New York	1957	64.3	...	...	...	...	...	...	...	...	35.7
	1961	65.4	...	...	...	[2]	...	...	[2]	...	34.6
Middle Atlantic	1957	71.6	...	...	...	...	...	...	...	...	28.4
	1961	71.7	...	...	...	[2]	...	...	[2]	...	28.3
East Central	1957	42.4	5.0	5.2	10.2	0.9	0.7	27.2	...	...	18.6
	1961	46.5	4.8	7.0	11.8	[2]	0.8	21.4	[2]	0.5	19.0
Metropolitan Chicago	1957	28.6	0.1	18.9	19.0	0.1	50.3	...	...	...	2.0
	1961	32.4	...	20.5	20.5	[2]	35.9	...	[2]	...	11.2
West Central	1957	34.5	20.6	9.0	29.6	25.8	2.1	...	...	...	8.0
	1961	41.7	18.7	9.2	27.9	[2]	0.9	0.1	[2]	...	29.4
Southeast	1957	52.6	16.0	5.7	21.7	...	...	5.3	...	3.1	17.3
	1961	54.2	12.5	4.2	16.7	[2]	...	3.0	[2]	5.6	20.5
Southwest	1957	48.4	39.6	3.9	43.5	...	...	...	...	...	8.1
	1961	46.5	38.0	2.7	40.7	[2]	...	...	[2]	0.3	12.5
Pacific	1957	39.2	42.4	...	42.4	...	...	...	6.0	...	12.4
	1961	38.0	38.6	...	38.6	[2]	...	...	[2]	...	23.4

[1] Purex acquired Fleecy-White in October 1958.
[2] Hilex and SaniClor included in "All Others" in 1961.
... Indicates no sales in the area.

SOURCE: CX 325, p. 77; CX 721 Z-38-Z-44.

separately in the June-July 1961 Nielsen report, but was included in the "All Others" category, as was the Sani-Clor brand whose sales represented less than 1% of the national sales in 1957. Two other companies whose brands of liquid bleach are not named in the report but are included in the "All Others" category are the Hood Chemical Company and the J. L. Prescott Co. each of whose sales of household liquid bleach for the year 1957 exceeded the sales of the Linco brand but were less than those of Roman Cleanser.

It is noted that Clorox not only increased its market share of the total sales of household liquid bleach in the United States as a whole between the June-July 1957 and the June-July 1961 periods from 48.8% to 51.5% as indicated above, it also increased its market share even more substantially, at the expense of its competitors, in at least four of the nine sections of the country covered in the accompanying table; namely, New England, East Central, Metropolitan Chicago and West Central. In the New England region, Clorox's increase in its market share was particularly significant, having risen from 56% in the 1957 period to 67.5% in the 1961 period, an increase of 11.5 percentage points in the four year period since the acquisition of Clorox by P & G., while the market share of all other household liquid bleach producers in that area decreased from 44% to 32.5%. During this same period, Clorox's market share increased in the East Central region from 42.4% to 46.5%; in the Metropolitan Chicago area from 28.6% to 32.4%; and in the West Central region from 34.5% to 41.7%. Also during this same period, the market share of Purex and "Fleecy-White" combined was decreasing in four of the six regions in which they operated, namely: West Central, from 29.6% to 27.9%; Southeast, from 21.7% to 16.7%; Southwest, from 43.5% to 40.7%; and Pacific 42.4% to 38.6%. The increase in

market share of the combined Purex, "Fleecy-White" sales during this period in the other two regions was insignificant, amounting to only 1.6 percentage points in one region and 1.5 percentage points in the other, namely, East Central and Metropolitan Chicago, respectively. The market share of Roman Cleanser, the next largest competitor of Clorox was also decreasing during this same period from 5.9% to 4.1% in the United States as a whole, and from 27.2% to 21.4% in the East Central region, and from 5.3% to 3% in the Southeast. In the only other area in which Roman Cleanser was sold, the West Central region, it showed a market share of only 0.1% in the 1961 period where it apparently had no sales in the 1957 period.

The market share of Clorox in the United States as a whole and in the nine sections of the country reflected in Table I above is shown for the bi-monthly periods June-July 1957 and June-July 1961 on a Consumer Dollar Basis, and, as indicated in the preceding discussion, shows an increase of 2.7 percentage points. Respondent's Exhibit 135 shows that Clorox's average annual market share, on the same Consumer Dollar Basis, increased 3.5 percentage points from August 1, 1957 to August 1, 1961 and Respondent's Exhibit 134 shows that Clorox's average annual market share, on a 32 oz. Equivalent Unit Basis, increased 3.3 percentage points during the same period of time. It will also be noted that, while Table I shows an increase in Clorox's market share in the New England region from the June-July 1957 period to the comparable 1961 period of 11.5 percentage points, Respondent's Exhibit 136 shows that Clorox's average annual market share in this region increased 15.5 percentage points from August 1, 1957 to August 1, 1961. Respondent's Exhibit 136 also shows somewhat greater increases in three of the other regional markets than the increases shown in those

markets in Table I, and lesser increases in three of the remaining regional markets.

VII. Some Household Liquid Bleach Manufacturers Sold A Portion Of Their Output To Grocery Chains For Resale Under Private Brand Labels.

Respondent introduced into evidence a list of more than 200 private brand labels of household liquid bleaches being manufactured and sold.* It appears, however, that the household liquid bleach represented by these 200 odd private brand labels, was manufactured by only 54 manufacturers or suppliers. One label, that of Safeway Stores, represented a private brand manufactured by Safeway, and not by any other manufacturer. Of the 54 manufacturers, six have been mentioned hereinbefore as competitors of Clorox Chemical at the time of the acquisition.

The record indicates that certain of the testifying liquid bleach competitors of the respondent manufactured household liquid bleach for sale by others under private brand labels, in addition to manufacturing and selling bleach under their own brand names. Some of such competitors, and the number of private brand labels of household liquid bleach manufactured by them, for sale by others, were as follows: Purex—34; J. L. Prescott Company—41; and Hood—7. Other competitors, hereinbefore mentioned, which also manufacture private brand labels for sale by others are Lady's Choice Foods, Linco Products Corporation, and Roselux Chemical Company. The following named household liquid bleach producers apparently do not manufacture private brand labels: No-Worry Chemical Company; Sunlight Chemical Company; Savol Bleach Company; and Gardiner Manufacturing Company. The Jones Chemi-

* Respondent's Exhibit 69 A-Z.

cal Company began to sell household liquid bleach under a private brand label to a chain store in 1958.

The record does not contain any figures with respect to volume, but from the testimony of officials of these companies it appears that the Hood Chemical Company and the J. L. Prescott Company sold a substantial portion of their household liquid bleach to chain stores under private brand labels. The Linco Products Corporation sold about 12% of its volume to chain stores under private brand labels during the past few years, while the sales of household liquid bleach of other producers to the chain stores under private labels were *de minimis*. There is not sufficient evidence in the record to determine or find that the sale of private brand labels of household liquid bleach to grocery chain stores has increased since the year 1955.

Except for the Purex Company, the known manufacturers of private brand label liquid bleach for chain stores are not themselves important factors in the household liquid bleach industry, from the standpoint of their volume of sales. For instance, the combined total sales of such product by Hood Chemical and J. L. Prescott do not represent more than 5% of the industry. It also appears from the record that most of Hood Chemical Company sales of private brand label liquid bleach to chain stores was in the metropolitan New York area; the Linco Product Corporation in the Chicago metropolitan area; and most of J. L. Prescott Company's sales under private brand labels were in and around Boston, Massachusetts, and in the New York City metropolitan area.

Furthermore, it will be noted that in the table appearing on page 19 hereof, containing Neilsen data for the two-month period, June-July 1957, the respective percentages of sales by the different manufacturers do not include their sales of private label brands. However, such sales are

included under the heading "All Others" which for those two months were less than 19% throughout the United States which, of course, would include, in addition to private label brands, all household liquid bleach sold throughout the country by all other manufacturers not listed in the table, including the J. L. Prescott Company and the Hood Chemical Company.

In view of the foregoing, it is found that the volume of sales of liquid bleach under private brand labels to grocery chains is not a substantial competitive factor in the household liquid bleach industry.

VIII. Respondent's Market Position In The Soap, Detergent, and Abrasive Cleanser Markets.

According to Nielsen Food Index reports, P & G is the leading producer in the United States of soap and synthetic detergents, and is one of the two leading producers of abrasive cleanser products. In 1957, P & G sales of packaged detergents in grocery stores was approximately 54.3% of total value on a consumer dollar basis, and 55% on a consumer unit basis, of the total national sales of such products. P & G consumer sales of toilet soaps in grocery stores in 1957 accounted for approximately 31.2% of total sales on a dollar basis and 37.3% on a unit basis of total national sales.

In the abrasive cleanser grocery store consumer sales market, sales of P & G's "Comet," on a dollar basis, represented approximately 36.5% of the national market in February and March 1958.

IX. P & G's Selling and Merchandising Methods.

A. METHOD OF DISTRIBUTION.

P & G sells all its products, except Clorox, through a subsidiary, Procter and Gamble Distributing Company, which

has its own salesmen who call on wholesale jobber and retail outlets in the grocery, drug, department, and variety store fields.

The P & G sales force is divided into sales departments or divisions, each division selling a line of closely related products. For instance, the Case Soaps Sales Department sells all P & G packaged household soaps, cleansers, and synthetic detergents. The Case Food Sales Department sells P & G household edible products, including the acquired Duncan Hines and Big Top products. The Toilet Goods Sales Department sells the toiletries products manufactured by the Company, which includes shampoos, home permanents, and dentifrices. There is also a division which handles paper products.

P & G has approximately 1800 salesmen selling its products, and all of P & G sales personnel, practices and policies are under one man, the P & G Vice President of Sales.

B. SHELF SPACE IN GROCERY STORES.

The obtaining and retention of adequate shelf space in retail outlets, particularly in self-service grocery stores, is a fundemental objective of P & G salesmen. In January 1957 P & G inaugurated a "Chain Supermarket Retail Operation" devoted exclusively to shelf space. This program basically sought to realign soap, detergent and cleanser shelf space by grouping products into departments, and dividing said departments into proper classifications, alloting shelf space in ratio to sales movement.

There is an acute shortage of shelf space for all products, including respondent's, in the nation's grocery stores because of the greatly increased number and types of items carried by grocers in recent years. Adequate shelf space today is one of the things manufacturers compete for in grocery stores, especially in the larger supermarkets.

Each P & G salesman, in addition to selling his line of P & G products, is responsible for obtaining advertising and other merchandising support from his customers, and for obtaining retail store shelf and display space for P & G products.

According to the President of respondent: "It's one of the salesman's normal duties to make sure to try to secure adequate shelf space for our brands."

Shelf space is generally allocated by grocers on the basis of the sales movement of a product, and the reputation and merchandising ability of the manufacturer of the product. As one liquid bleach manufacturer witness testified:

> "Well, the allocation of shelf space in the grocery stores is controlled by competitive factors that were previously recited; the amount of advertising, the amount of promotion, whether or not the product is being couponed or sampled; what sort of consumer promotion might be offered, how much sales help is offered the store manager in re-allocating or re-arranging shelf space, all these things have a factor in determining which product gets the maximum shelf space."

Another chain store grocer witness testified that in allocating shelf space the store owner takes into consideration such factors as advertising, promotion, and the character of the firm that is promoting the product so as to know whether or not it can carry out its promises.

C. ADVERTISING PROGRAMS.

Sales movement of products, including respondents, in grocery stores is based primarily on the ability of the producer to advertise and promote its products. Grocers desire "pre-sold" products which they do not have to advertise or promote themselves. "P & G brands are pre-sold through extensive advertising."

A chain store grocer witness testified that consumer acceptance is obtained, "by consistent advertising, radio, television. You name it. They could have many other gimmicks that are paramount to the supermarket industry, not particularly as to bleach or soaps. There are just any number of items that would cause a product to move."

As hereinbefore indicated, P & G is one of the nation's largest advertisers, having spent at least $79,000,000 to advertise its products in the fiscal year ended June 30, 1957, and approximately $82,500,000 for that purpose during the calendar year 1957.

Its principal soap and detergent competitors, Colgate-Palmolive, and Lever Brothers, spent approximately $37,000,000, and $24,000,000, respectively, during 1957 on national advertising. Purex, the principal competitor of respondent in the household liquid bleach business, spent approximately $3,000,000 in national advertising during the same year.

P & G uses television spot announcements extensively in advertising its products. In 1957 it ranked first in the nation as to amounts expended in this manner, having spent approximately $25,000,000 compared to approximately $8,000,000 expended by each of its principal competitors, Colgate-Palmolive and Lever Brothers for this type of advertising.

P & G also uses television programs extensively in advertising its products. It also ranked first in the nation in 1957 on amounts expended in this medium, having expended approximately $47,000,000. Colgate-Palmolive, its nearest competitor, spent approximately $19,000,000 and Lever Brothers spent approximately $16,000,000 for this type of advertising during this period.

The above amounts expended by P & G on television advertising alone indicate the advertising strength of the respondent.

P & G also utilizes radio, newspapers, and magazines extensively in advertising its products, and ranks high in the nation in the last two of these advertising media. It spent substantially more money in advertising in magazines in 1957 than any other detergent producer, and ranked fourth in the nation in magazine advertising.

Discount rates are available to large advertisers which can reduce their advertising cost by as much as 30% (or permit them to purchase substantially more advertising for the same amount of money expended). To earn these discounts, large advertisers may, as P & G does, combine their advertising on a given medium of all their products. This makes the pro-rata cost per product far less than the amount required to be paid by the one-product company. Even a company with many products cannot earn discounts comparable to those of P & G if their combined amount of advertising is insufficient to qualify for a maximum discount.

D. SALES PROMOTION METHODS.

In fiscal 1957 respondent P & G charged to profit and loss for sales promotion more than $47,000,000, which was approximately 5% of the amount of its net domestic sales. In conjunction with its advertising, P & G has promoted its household products by offering to the consumer such promotions as:

1. "Two-for-one" price sales.
2. Special packs wherein a small size is given free or at a reduced price with the purchase of the attached larger size or the entire pack price is reduced.
3. Free samples mailed or delivered to the consumer's residence.
4. Price-reducing coupons mailed to or delivered to the consumer's home, alone or packaged with free samples.

5. Reduced consumer prices on quantity purchases.
6. Free or reduced price merchandise premiums attached to the P & G product or to be sent for by the consumer.
7. Contests with cash and merchandise prizes for the consumer.
8. Cross-couponing of P & G products and of P & G and other nationally known related products in that a price-reducing coupon for one product will be packaged in another P & G product.
9. Combining several of its products in a joint promotion, utilizing combinations of promotions hereinbefore mentioned.
10. Combinations of promotions hereinbefore mentioned for a single product.

E. P & G'S "COMET" ADVERTISING AND SALES PROMOTION CAMPAIGN.

An example of the effectiveness of P & G's advertising and sales promotion campaigns is found in the "very successful" introduction and customer acceptance of its household cleanser "Comet." In the spring of 1957 respondent P & G introduced nationally its "Comet" brand of abrasive cleanser containing a bleach, with a national advertising campaign, after test marketing in selected areas, utilizing radio, television, newspaper, and magazine advertising, coordinated with extensive consumer promotions. From sometime in 1956 through October 1957, over a period of not more than 22 months, P & G spent for the direct advertising and promotion of "Comet" approximately $7,200,000. Of this amount, approximately $4,400,000 was spent in the first ten months of 1957 alone on "Comet" advertising.

As a result of the foregoing campaign, "Comet," according to Neilsen Food Index, steadily and consistently increased its market share, until by the last bi-monthly period of record herein (February-March, 1958) it had

attained 36.5% of the national market of all scouring cleansers sold in grocery stores, and was within .4% of tying "Ajax," the leader in this field, for the number one rank. This position was gained by P & G within a period of approximately 20 months, from August 1956 to March 1958.

X. Changes Made By P & G Subsequent To The Acquisition of Clorox Chemical.

A. AS TO MANAGEMENT PERSONNEL OF CLOROX.

At the time of the acquisition, respondent P & G took over active control of the Clorox Chemical Company and installed its own personnel in key and controlling policy making positions. For example, Mr. Fred Brown, a veteran of 45 years with P & G, formerly in charge of all P & G domestic manufacturing, became Executive Vice President and General Manager of Clorox, reporting directly to Mr. Morgens, the President of both P & G and Clorox. Mr. Brown replaced the former President of Clorox Chemical, Mr. W. J. Roth, who was retained in a consulting capacity only.

P & G also transferred three other men of staff level at the time of acquisition to key positions with the Clorox Company. One, a marketing specialist with P & G who had been responsible for the promotion of several P & G brands, including "Tide," was made a marketing staff associate; another, a manufacturing specialist, became a manufacturing staff associate, reporting directly to Mr. Brown; and a third was placed in charge of Clorox's laboratory controls and the technical phases of its business. Also, in January 1958, a former P & G district manager of case soap sales was made Pacific Coast Division Sales Manager of the Clorox Company.

In view of P & G's wide and successful experience in marketing its products, its technical know-how, together with its financial resources, these changes in the management of Clorox will result in substantial advantages to P & G in the marketing of Clorox liquid bleach.

B. As to Plant Operations.

P & G closed down the Kansas City, Missouri, Clorox Chemical Company plant shortly after the acquisition, and is producing Clorox in a building on its own Kansas City, Kansas, property, with P & G personnel. This action was taken in the interest of economy. Rather than to have two plants manufacturing in the same area, it was decided to combine that production in one plant.

The Boston plant of Clorox Chemical was also closed down because it was thought that the Eastern territory could be supplied more economically from the Jersey City, New Jersey, Clorox plant.

C. As to Sales Promotion Campaigns.

Respondent P & G has added promotions to Clorox merchandising programs using price-off labels, free premiums, price-reducing coupons, and reduced-price premiums, coordinated with advertising in selling Clorox in selected areas and nationally.

Examples of such promotions include merchandise premiums and special Clorox labels, usually during spring and fall housecleaning drives. One such brochure urges merchant support and stresses the coordinated advertising support in the same manner as is done for other P & G products.

A premium offer of an ironing board cover was made in the southeastern United States in November 1957, in

Erie, Pennsylvania, in January and February 1958, and in June 1958, in the southwestern Sales Division of P & G.

A premium pack of a dishcloth attached to a bottle of Clorox was also used in Los Angeles in June 1958.

This change to consumer promotion was decided upon by The Clorox Company as early as October 7, 1957.

In the spring of 1958, in the so-called "Clorox Spring Housecleaning Bee," consumer promotions were featured, such as an ironing board cover for 50 cents and a Clorox label.

Also in June 1958, a 5-cent price-off labels on gallons were used in metropolitan Chicago, which includes northern Illinois and a part of Wisconsin. Other price-off labels were used in Detroit, Nashville, Chattanooga, and San Francisco between February and July 1958.

The evidence introduced at the hearings held on December 1st and 12th, 1961, pursuant to the order of the Commission entered on June 15, 1961, remanding this proceeding to the Hearing Examiner for the reception of further evidence, clearly shows that respondent substantially increased the promotional activity with respect to Clorox, its acquired liquid bleach product, during the period July 1958 through July 1961. Such evidence shows that respondent used a total of about seventy promotions during that 3-year period at a total cost of approximately $1,550,000 for the promotion of Clorox. This amount is in addition to the $400,000 which respondent had budgeted immediately after the acquisition for the fiscal year ended June 30, 1958, for promotional expenditures of this product.

Prior to the acquisition of Clorox Chemical by P & G, the former company had not used consumer promotions for a number of years.

The evidence further shows dramatically that the market impact of the P & G-Clorox promotions was immediate

and indicates that they were responsible, at least in part, for reversing the trend of Clorox's diminishing market share growth under the ownership of Clorox Chemical Co.

The following table shows the market share of Clorox and the annual changes therein, of the total sales of household liquid bleach in the United States, moving through grocery stores, for each of the four years preceding the acquisition and each of the four years following the acquisition on both a 32-ounce Equivalent Unit Basis and on a Consumer Dollar Basis, together with the total annual expenditures by P & G for the promotion of Clorox.

TABLE II

Clorox Market Share and Annual Changes Household Liquid Bleach and Promotional Expenditures

	32 Oz. Equivalent Unit Basis		Consumer Dollar Basis		
Year Ended July 31	Clorox Share	Change	Clorox Share	Change	Promotional Expenditures
Prior to Acquisition					
1953	41.4	....	45.3	....	[1]
1954	43.0	+1.6	46.4	+1.1	[1]
1955	44.0	+1.0	47.1	+0.7	[1]
1956	44.8	+0.8	47.8	+0.7	[1]
1957	45.3	+0.5	48.4	+0.6	[1]
Subsequent to Acquisition					
1958	45.8	+0.5	48.7	+0.3	$400,000 [2]
1959	46.8	+1.0	50.1	+1.4	$520,300
1960	48.8	+2.0	51.8	+1.7	$648,800
1961	48.6	−0.2	51.9	+0.1	$379,800

[1] No Consumer promotions by Clorox Chemical Co.
[2] Budgeted by P & G for Clorox promotions for fiscal year ended June 30, 1958.

SOURCE: RXs 134A, 135A and CX 718A-F.

Findings As to the Facts

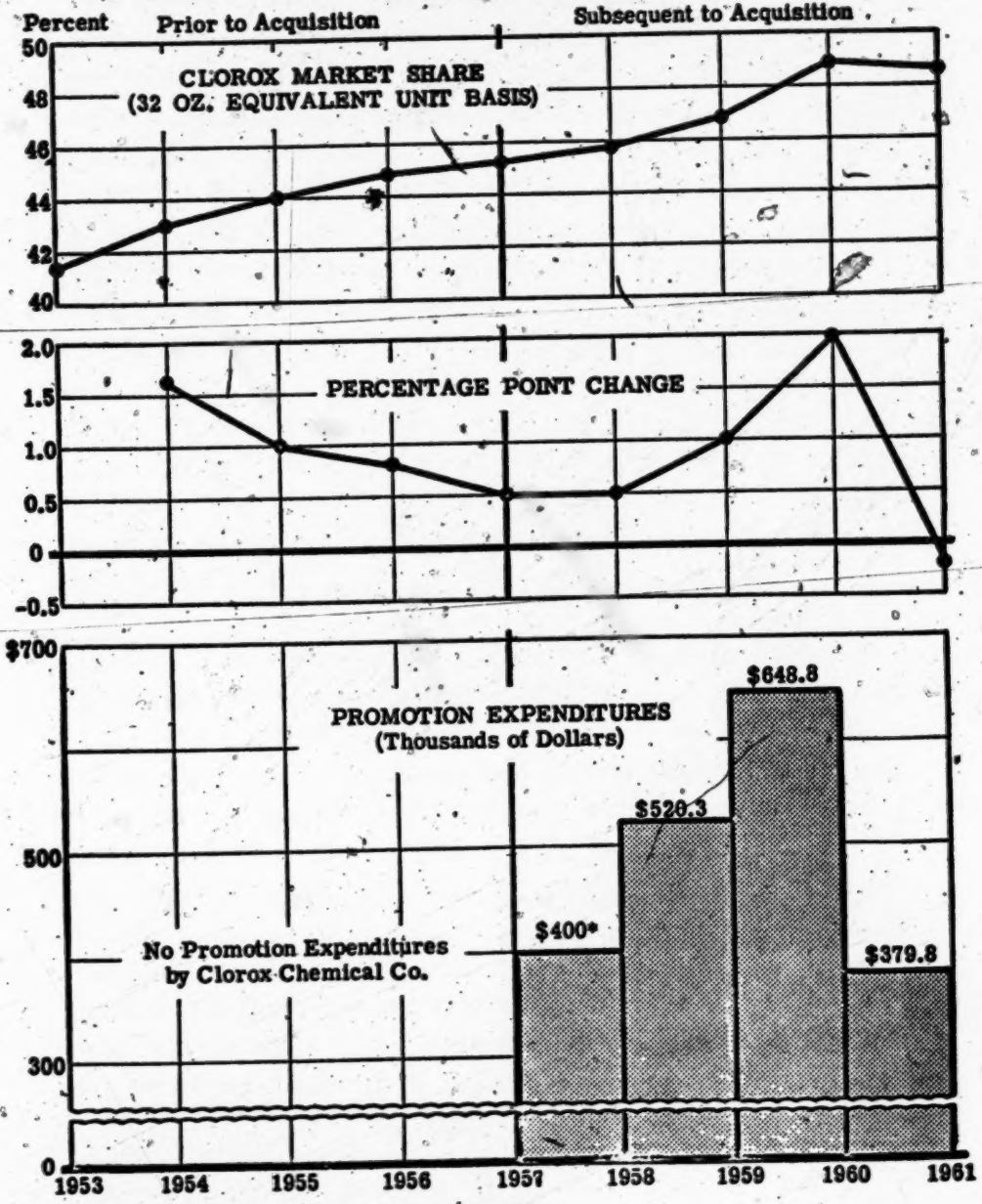
It will be noted from the foregoing table that on both the 32 oz. Equivalent Unit Basis and the Consumer Dollar Basis, while Clorox's market share shows an increase every year from fiscal 1953 through fiscal 1961, the *trend* of the change in Clorox's market share shows a definite *declining trend* each year from fiscal 1953 to the date of acquisition, namely from +1.6 to +0.5 on the Unit Basis and from +1.1 to +0.6 on the Consumer Dollar Basis, during which time Clorox Chemical used no customer promotions and had no promotional expenditures. On the other hand, in fiscal 1958, the first year after the acquisition, when P & G budgeted $400,000 for promotional expenditures, the trend of the change in Clorox's market share leveled off and then in the following two years, fiscal 1959 and 1960, when Clorox's promotional expenditures increased to $520,300 and $648,800, respectively, the change in Clorox's market share shows a decided upward trend from +0.5 to +2.0 on the Unit Basis and from +0.3 to +1.7 on the Consumer Dollar Basis. In fiscal 1961, the change in Clorox's market share shows a definite reversal, although its actual market share shows only a slight decline of two-tenths of one percent on the Unit Basis and a slight increase of one-tenth of one percent on the Consumer Dollar Basis. In this connection, it is noted that P & G decreased its promotional expenditures materially in that fiscal year to $379,800 from $648,800 in fiscal 1960.

The following graph shows visually the correlation between Clorox's market share and the trend of the change therein from fiscal 1953 through fiscal 1961 on the one hand, and the amount allocated to promotional expenditures during that period of time.

Findings As to the Facts

A CORRELATION OF CLOROX MARKET SHARE AND ITS PERCENTAGE POINT CHANGE WITH EXPENDITURES FOR PROMOTIONS

(Years End July 31)



*Budgeted for fiscal year ended June 30, 1958.

SOURCE: CX 134A, 718A-F.

Findings As to the Facts

The respondent contends in its Proposed Findings filed May 8, 1959, (page 91), that in the case of established products, such as Clorox liquid bleach, promotions may result in temporary gains in market share which, following the promotion, recede to their former level. However, the evidence in this case does not support this contention, as discussed in the immediately preceding paragraphs and reflected in the graph correlating Clorox's market share and its percentage point changes with its expenditures for promotions, on page 33 above. Another instance where evidence of probative value is available which relates the effect of a Clorox promotion directly to market share, (Erie, Pa., area, CX 450) Clorox's market share increased from 49% of the market during the period October 14 to November 11, 1957, (the period immediately preceding Clorox's "Money Saving Clorox Special" promotion on November 25, 1957, and followed by other Clorox promotions in that area in January and February 1958) to 63% in the period December 12, 1957 to January 6, 1958.

Although Clorox's market share leveled off after these promotions to 52.9% of the Erie market during the period February 3-March 3, 1958, it retained a gain of almost 4 percentage points in market share in this area. During this same period, the market share of one of its principal, but smaller competitors, Gardiner Manufacturing Company, with its 101 Brand, was decreasing from 25.2% to 22.3% of the market, and "All Other" brands were decreasing from 18.9% to 17.7%.

Furthermore, if the respondent's contention is correct, that promotions result in only temporary gains in market shares and then recede to their former level, it is inconceivable that Clorox would earmark $400,000 of its first

advertising budget after the acquisition and spend in excess of $1,500,000 in the three succeeding years for such "ineffective" promotions.

D. As to Advertising.

1. *In Magazines.*

The Clorox Company, under P & G control, made a number of changes in the magazine advertising as used by Clorox Chemical Company, not only in the kind of magazines used, but in the type of ads appearing therein. For example, in February 1958, Clorox began the use of *monthly full page black and white ads* in some magazines in which Clorox Chemical had run *smaller color ads every other month.* Several magazines that had been used for advertising by Clorox Chemical were dropped entirely and the advertising in others, such as certain farm magazines, was reduced. These latter changes would appear to be consistent with P & G's general policy, as testified to by its advertising manager, of advertising in magazines with national circulation.

2. *On Radio.*

The Clorox Company, under control of respondent P & G, has doubled the amount of time purchased in television spot announcements of Clorox, compared to the record of Clorox Chemical, and placed less emphasis on radio in conformance with the P & G policy.

Also consistent with P & G policy, subsequent to the acquisition of Clorox Chemical Company, spot announcements on some independent, unaffiliated radio stations were terminated, and were switched to net-work stations which generally offered more listening audience. After the acquisition, 34 radio stations were dropped from Clorox

advertising, of which 27 were independent stations, unaffiliated with a net-work. One new station was added.

3. *On Television.*

Clorox has been advertised, since the acquisition, on spot television in new markets wherein the Clorox Chemical Company was not using spot television. Also television spot advertising has been increased in other markets, wherein the Clorox Chemical Company had done very little television spot advertising.

While Clorox dropped or decreased TV spot advertising in a few markets, that had been used by Clorox Chemical Company prior to the acquisition by P & G, it added or increased its TV spot advertising after the acquisition in a substantially larger number of markets, either not used at all, or used to a more limited degree by Clorox Chemical Company.

The monthly average number of seconds of TV spot advertising used by Clorox Chemical Company in TV markets decreased or dropped by Clorox after the acquisition were 5,956.7, while such average used by Clorox in such markets after the acquisition was 3,597.5, or a decrease of only 2,359.2 seconds. On the other hand, the monthly average number of seconds on TV spot advertising used by Clorox in new or increased TV markets after the acquisition was 96,660 seconds, as compared to a monthly average of 43,277.4 seconds used by Clorox Chemical Company in such territory prior to the acquisition, or an increase of 53,382.6 seconds.

Thus, the total monthly average number of seconds of TV spot advertising used by Clorox Chemical Company before the acquisition, in both decreased and increased TV markets, was 49,234, whereas such average used by Clorox

after the acquisition in such markets was 100,257, or a net increase of 51,023 seconds. The following tables set forth in detail the monthly average, before and after the acquisition, in (1) New or Increased TV Markets, and (2) Decreased or Dropped TV Markets.

TABLE III

(CX-545)

New or Increased TV Markets After the Acquisition

(MONTHLY AVERAGE NUMBER OF SECONDS)

	Monthly Average	
	Before	*After*
Abilene, Texas	0	1005.0
Albuquerque, N. M.	105.0	1560.0
Amarillo, Texas	0	1005.0
Ashville, N. C.	110.0	1552.5
Atlanta, Ga.	783.3	952.5
Austin, Texas	0	1012.5
Baltimore, Md.	1061.6	1150.0
Beaumont, Texas	0	1012.5
Birmingham, Ala.	1200.0	1795.0
Boston, Mass.	1200.0	1647.5
Buffalo, N. Y.	1041.7	1560.0
Charleston, S. C.	81.7	1217.5
Charlotte, N. C.	716.7	1045.0
Chattanooga, Tenn.	0	10.0
Chicago, Ill.	1991.7	2942.5
Cincinnati, Ohio	670.0	907.5
Cleveland, Ohio	1638.3	2820.0
Columbia, S. C.	375.0	1022.5
Columbus, Ohio	718.3	1207.5
Corpus Christi, Texas	0	1012.5
Dallas, Texas	68.3	2212.5
Davenport, Iowa	828.3	1560.0
Denver, Colo.	721.7	992.5
Des Moines, Iowa	785.0	952.5

Findings As to the Facts

TABLE III

(Continued)

(CX-545)

New or Increased TV Markets After the Acquisition

(MONTHLY AVERAGE NUMBER OF SECONDS)

	Monthly Average	
	Before	*After*
Detroit, Mich.	933.4	1045.0
El Paso, Texas	185.0	2175.0
Erie, Pennsylvania	0	1695.0
Evansville, Ind.	0	1620.0
Fort Worth, Texas	0	435.0
Galveston, Texas	600.0	962.5
Greenville, N. C.	70.0	947.5
Harlingen, Texas	0	345.0
Houston, Texas	868.3	1122.5
Indianapolis, Ind.	978.3	1385.0
Jackson, Miss.	845.0	1297.5
Kansas City, Mo.	1700.0	2112.5
Los Angeles, Calif.	1218.3	2205,0
Louisville, Ky.	876.7	1890.0
Lubbock, Texas	1375.0	2602.5
Memphis, Tenn.	831.7	952.5
Miami, Fla.	506.7	987.5
Midland, Texas	0	577.5
Milwaukee, Wis.	0	977.5
New Orleans, La.	660.0	777.5
New York, N. Y.	1726.7	2105.0
Norfolk, Va.	371.7	432.5
Odessa, Texas	0	435.0
Oklahoma City, Okla.	1353.3	2400.0
Peoria, Ill.	800.0	952.5
Philadelphia, Pa.	1256.7	1382.5
Phoenix, Arizona	73.3	1040.0
Pittsburgh, Pa.	908.3	955.0
Portland, Ore.	1086.7	2282.5

TABLE III

(*Continued*)

(*CX-545*)

New or Increased TV Markets After the Acquisition

(MONTHLY AVERAGE NUMBER OF SECONDS)

	Monthly Average	
	Before	*After*
Raleigh, N. C.	831.7	1290.0
Roanoke, Va.	71.7	1040.0
Rochester, N. Y.	868.3	2075.0
St. Louis, Mo.	793.3	1042.5
San Angelo, Texas	0	1005.0
San Antonio, Texas	91.7	1825.0
San Francisco, Calif.	1756.6	2027.5
Schenectady, N. Y.	46.7	585.0
Scranton, Pa.	68.3	1040.0
Seattle, Wash.	1191.7	1722.5
Shreveport, La.	68.3	1045.0
Syracuse, N. Y.	1633.3	1897.5
Tampa, Fla.	823.4	865.0
Temple, Texas	0	465.0
Tucson, Arizona	90.0	1297.5
Tulsa, Okla.	76.7	1360.0
Waco, Texas	0	570.0
Washington, D. C.	745.0	857.5
Wheeling, W. Va.	0	1005.0
Wichita, Kans.	799.0	1382.5
Wichita Falls, Texas	0	1005.0
Youngstown, Ohio	0	1005.0
Total	43,277.4	96,660.0
Increase		53,382.6
Decrease (See Table IV)		2,359.2
Net Increase		51,023.4

SOURCE: CX545A, B, C, D.

TABLE IV

(CX-545)

TV Markets Decreased or Dropped After the Acquisition

(MONTHLY AVERAGE NUMBER OF SECONDS)

	Monthly Average	
	Before	*After*
Bellingham, Wash.	1256.7	457.5
Huntington, W. Va.	150.0	0
Jacksonville, Fla.	1050.0	1040.0
Little Rock, Ark.	305.0	0
Omaha, Nebraska	431.7	320.0
Salt Lake City, Utah	1000.0	827.5
Spokane, Wash.	1288.3	952.5
Tacoma, Wash.	311.7	0
Wilmington, N. C.	163.3	0
Total	5956.7	3597.5
Decrease		2359.2
Monthly average number of seconds of TV spots in cities used by the Clorox Chemical Company and not used by the Clorox Company		930.0

SOURCE: CX545A, B, C, D.

The number of cities used by Clorox Chemical Company for TV spot advertisements before the acquisition was 65, while the number of cities used for such purpose by Clorox after the acquisition was 80, an increase of 15 cities.

The monthly average number of seconds of TV spot advertisements used by Clorox after the acquisition, in cities not used at all by Clorox Chemical Company, was 16,197.5 seconds, while such monthly average of TV spots in cities used by Clorox Chemical Company before the acquisition and not used by Clorox after the acquisition,

was only 930 seconds. (See Tables III and IV on the preceding pages.)

The number of TV stations used by Clorox for TV spot advertising for the first time after the acquisition was the same as the number of TV stations dropped by Clorox after the acquisition, namely, 28. However, the total number of seconds used by Clorox for such advertising on the 28 new stations for the 8-month period, following the acquisition, August 1, 1957, through March 31, 1958 (157,000), was substantially more than the total number of seconds (104,080) used by Clorox Chemical Company for such advertising during the longer 12-month period, July 22, 1956, through July 31, 1957, on the 28 TV stations dropped by Clorox after the acquisition. (See Tables V(a) and V(b) on the following pages.)

The Clorox Company used 129,580 seconds of TV spot advertising in 19 new cities during the 8-month period following the acquisition, August 1, 1957, through March 31, 1958, whereas Clorox Chemical Company used only 11,160 seconds of TV spot advertising during the 12-month period, July 22, 1956, through July 31, 1957, in 4 cities which were dropped by the Clorox Company after the acquisition. (See Tables VI(a) and VI(b) on the following pages.)

A further indication of a more aggressive sales policy pursued by Clorox after the acquisition of Clorox Chemical Company by P & G is evidenced by the fact that, while Clorox Chemical Company used only 592,020 seconds of TV spot advertising in the 12-month period prior to the acquisition, Clorox purchased a total of 803,060 seconds of TV spot advertising in the shorter 8-month period immediately following the acquisition. (Source CX 545, A, B, C, D.)

TABLE V(a)

NEW TELEVISION STATIONS USED BY THE CLOROX COMPANY FOR SPOT ADVERTISING DURING THE PERIOD AUGUST 1, 1957—MARCH 31, 1958

Location	*TV Station used*	*Total No. of seconds during period*
Abilene, Texas	KRBC TV	8,040
Amarillo, Texas	KFDA TV	3,480
Amarillo, Texas	KGNC TV	4,560
Austin, Texas	KTBC TV	8,100
Beaumont, Texas	KFDM TV	8,100
Chattanooga, Tennessee	WRGP TV	80
Corpus Christi, Texas	KRIS TV	8,100
El Paso, Texas	KROO TV	3,480
Erie, Pennsylvania	WICU TV	13,560
Evansville, Indiana	WFEI TV	12,960
Fort Worth, Texas	WBAP TV	3,480
Harlingen, Texas	KRGV TV	2,760
Los Angeles, California	KRCA TV	10,860
Los Angeles, California	KTTV TV	480
Miami, Florida	WCKT TV	2,640
Midland, Texas	KMID TV	4,620
Milwaukee, Wisconsin	WTMJ TV	7,820
Odessa, Texas	KOSA TV	3,480
Salt Lake City, Utah	KTVT TV	2,420
San Angelo, Texas	KCTV TV	8,040
Spokane, Washington	KHQ TV	4,200
Temple, Texas	KCEN TV	3,720
Waco, Texas	KWTX TV	4,560
Wheeling, West Virginia	KTRF TV	8,040
Wichita, Kansas	KAKE TV	3,840
Wichita Falls, Texas	KFDX TV	4,560
Wichita Falls, Texas	KSYD TV	3,480
Youngstown, Ohio	WFMJ TV	8,040

Total TV Spot Advertising on New Stations	157,500
Grand Total of Clorox Spot TV Advertising	803,060
Percent Accounted for by New Stations	19.6

SOURCE: CX545A, B, C, D.

TABLE V(b)

TV STATIONS USED BY THE CLOROX CHEMICAL CO. FOR SPOT ADVERTISING DURING THE PERIOD JULY 22, 1956—JULY 31, 1957, DROPPED BY THE CLOROX CO. AUGUST 1, 1957—MARCH 31, 1958

Location	*TV Station Used*	*Total No. of Seconds During Period*
Atlanta, Ga.	WSB-TV	3060
Birmingham, Ala.	WBRC-TV	13400
Chicago, Ill.	WBBM-TV	5820
Cleveland, Ohio	WEWS-TV	1200
" "	WJW-TV	5740
Columbus, Ohio	WBNS-TV	1780
Denver, Colo.	KLZ-TV	3140
Huntington, W. Va.	WSAZ-TV	1800
Jackson, Miss.	WJTV-TV	1200
Little Rock, Ark.	KARK-TV	3660
Louisville, Ky.	WHAS-TV	300
New York, N. Y.	WCBS-TV	1080
Oklahoma City, Okla.	KWTV-TV	1440
Peoria, Ill.	WTVH-TV	260
Philadelphia, Pa.	WRCV-TV	6260
Portland, Ore.	KOIN-TV	9960
Raleigh, N. C.	WTVD-TV	1700
St. Louis, Mo.	KWK-TV	2020
San Francisco, Calif.	KGO-TV	40
" " "	KRON-TV	8880

Location	*TV Station used*	*Total No. of seconds during period*
Seattle, Wash.	KING-TV	1560
Spokane, Wash.	KXLY-TV	4800
Syracuse, N. Y.	WSRY-TV	7480
Tacoma, Wash.	KTNT-TV	3740
Tampa, Florida	WTVT-TV	4340
Washington, D. C.	WTOP-TV	4980
Wichita, Kans.	KTVH-TV	2980
Wilmington, N. C.	WMFD-TV	1960
(28 stations dropped)		
Total TV Spot Advertising on Stations Dropped		104,080
Grand Total of Clorox Chemical Co. Spot TV Advertising		592,020
Percent accounted for by stations dropped		17.6

SOURCE: CX545A, B, C, D.

TABLE VI(a)

New Cities in which The Clorox Company Used Spot Television Advertising During the Period August 1, 1957—March 31, 1958

Location	*TV Station used*	*Total No. of seconds during period*
Amarillo, Texas	KGNC	4,560
Amarillo, Texas	KFDA TV	3,480
Abilene, Texas	KRBC TV	8,040
Austin, Texas	KTBC TV	8,100
Beaumont, Texas	KFDM T V	8,100
Chattanooga, Tennessee ..	WRGP TV	80
Corpus Christi, Texas ...	KRIS TV	8,100
Erie, Pennsylvania	WICU TV	13,560

Location	*TV Station used*	*Total No. of seconds during period*
Evansville, Indiana	WFEI TV	12,960
Fort Worth, Texas	WBAP TV	3,480
Harlingen, Texas	KRGV TV	2,760
Midland, Texas	KMID TV	4,620
Milwaukee, Wisconsin ...	WTMJ TV	7,820
Odessa, Texas	KOSA TV	3,480
San Angelo, Texas	KCTV TV	8,040
Temple, Texas	KCEN TV	3,720
Waco, Texas	KWTX TV	4,560
Wheeling, West Virginia ..	WTRF TV	8,040
Wichita Falls, Texas	KFDX TV	4,560
Wichita Falls, Texas	KSYD TV	3,480
Youngstown, Ohio	WFMJ TV	8,040
Total TV Spot Advertising in New Cities		129,580
Grand Total of Clorox Spot TV Advertising		803,060
Percent Accounted for by New Cities		16.1

SOURCE: CX545A, B, C, D.

TABLE VI(b)

Cities in which the Clorox Chemical Company used spot television advertising during July 20, 1956—July 31, 1957, and were dropped by The Clorox Co., August 1, 1957— March 31, 1958

Location	*TV Station used*	*Total No. of seconds during period*
Huntington, W. Va.	WSAZ-TV	1800
Little Rock, Ark.	KARK-TV	3660
Tacoma, Wash.	KTNT-TV	3740
Wilmington, N. C.	WMFD-TV	1960

Total TV spot advertising in cities dropped	11,160
Grand total of Clorox Chemical Co. spot TV advertising	592,020
Percent accounted for by cities dropped	1.9

SOURCE: CX545A, B, C, D.

4. *Savings in Advertising Expenditures.*

Although the record indicates, as contended by respondent, that the per case rate expenditure for advertising and promotion budgeted by Clorox Chemical in the fiscal year ended June 30, 1957, and by the Clorox Company in the 12-month period ended June 30, 1958, were approximately the same, namely 16.4 cents per case, it appears that under P & G control an estimated savings accrued to Clorox in only a part of the latter period in its advertising expenditure as a result of the joint purchase by P & G and Clorox of advertising in the following media, and in at least the following amounts:

Television	$86,000.00
Radio	500.00
Magazines	50,000.00
Newspapers	2,000.00
Total Savings	$138,500.00

In addition, there is evidence which indicates that, if Clorox's advertising was fully coordinated with the advertising of P & G, even more substantial discount savings could be effected, which would enable Clorox to purchase considerably more advertising without increasing its per case rate budget for such purpose.

In an industry where all but a few of Clorox's competitors are small firms with limited financial resources, any such an amount of potential additional advertising cannot be considered insignificant.

That respondent P & G expected to accomplish such savings is indicated in a P & G confidential inter-office memorandum, dated February 28, 1957, recommending the purchase of *Clorox Chemical by P & G, where the following* statement is made:

> "We are advised that Clorox spent $2,660,000 in the last half of 1956 for advertising, or at the rate of $5,320,000 a year. We believe that *P & G advertising philosophies and economies* applied to an advertising expenditure of this size can be expected to further advance the Clorox business." *

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* Underscoring supplied.

XI. Efforts of Clorox Under P & G Ownership and Control To Prevent A Competitor From Entering Or Expanding in the Liquid Bleach Market.

1. *In Erie County, Pennsylvania.*

Prior to October 1957, as hereinbefore indicated, Clorox's market share of the household liquid bleach market in Erie, Pennsylvania was more than 50% of the total sales in that area, and the other principal brand of household liquid bleach sold in that market was the 101 Brand, manufactured by the Gardiner Manufacturing Company, which brand enjoyed approximately 30% of the market at that time. On or about October 14, 1957, the Purex Company began a market test in that area by offering a new energized household liquid bleach in a new improved type of container and handle, with a new label attached. A special

advertising campaign was put on, and promotional allowances were made to the dealer to enable him to sell the product at a lower price to the public. Coupons were widely distributed in the Erie area, entitling the housewives to a reduction of from 10 cents to 25 cents on the purchase of new Purex depending upon the size of the container.

Clorox, under the control of respondent P & G, combined an advertising and promotion campaign to prevent the Purex entry into the Erie, Pennsylvania, market. The first step was an advertisement placed in an Erie, Pennsylvania, newspaper on November 25, 1957, described as "Money Saving Clorox Special," and showing Clorox cents-off labels of 7 cents off on gallons, 5 cents off on half-gallons, and 3 cents off on quarts, and emphasizing the fact that the offer was available only in Erie County. Another premium offer was made in January 1958. This was followed, in February 1958, with a "Big Bargain Offer in Erie County" of a regular $1 ironing board cover for 50 cents with each purchase of Clorox. A special newspaper advertisement, featuring the ironing board cover offer, was scheduled to run in the Erie Times-News on February 20 and 21, 1958, and distributors in Cleveland were furnished quantities of display material to be sent to and used by the dealers in the Erie County area. In addition to the ironing board cover promotion advertisement, to be run on February 20 and 21, a second advertisement appeared in the Erie Times-News on February 27 and 28, 1958, and the dealers were furnished copies of a full-page Clorox advertisement carrying its selling message in the February issues of Good Housekeeping, Better Homes and Gardens, Ladies' Home Journal, and Parent's magazines; also a stepped-up schedule of Clorox television advertising in Erie County supplied additional selling support during the

month of February. In addition, reprints of the two Clorox newspaper ads and the magazine ads were sent in quantities to the distributors for mailing to the dealers, along with the bulletins in use at that time by the distributors.

Clorox continued to run these promotions in the Erie market until the end of March 1958. From October 1957, to March 31, 1958, Clorox spent more than $4,000 for TV spots, and $2,400 for newspaper advertisements in the Erie County promotion campaign, although TV spot had never before been used by the Clorox Company to advertise in that area.

As a result of this campaign conducted by Clorox under P & G control, Clorox was successful in nullifying Purex's test market attempt and in preventing Purex from becoming a substantial factor in the Erie County market. Although Purex was able to nearly equal Clorox in its share of the market of household liquid bleach in the Erie area in the period November 11 to December 9, 1957, Clorox was able to regain and even increase its market position in that area by the first of March 1958, at which time the Purex share had been reduced to approximately 7%.

As a final result, according to an official of the Purex Company, the market test that was run in Erie, Pennsylvania, was cancelled out because the Purex market share did not remain at a reasonbly good level. He stated: "It is not possible to do the piece of research that we anticipated, and get meaningful results."

An indirect result of the failure to successfully test the market in Erie, Pennsylvania, according to this official of the Purex Company, was the purchase by Purex of the John Buhl Products Company brand of household liquid bleach, "Fleecy-White." When asked for the reasons for

the purchase of the John Buhl Products Company, this Purex official stated:

> "One was that Purex had been unsuccessful in expanding its market position geographically on Purex liquid bleach. The economics of the bleach business, and the strong competitive factors, as illustrated by our experience in Erie, Pennsylvania, made it impossible, in our judgment, for us to expand our market on liquid bleach. Fleecy-White represented a brand that sold in fair volume in a limited geographical area, and this area represented an expansion of our geographical area."

2. *In Evansville, Indiana.*

The Purex Company also attempted a market test in Evansville, Indiana, at about the same time that it conducted the test in Erie, Pennsylvania. There was the difference that Purex had been selling its product in the Evansville market prior to October 1957, and no price-off coupons were used by it in the test. All that Purex did in the Evansville market, apparently, was to step up their advertising, featuring the newly designed bottle and label. However, Clorox countered by using price-off labels of 2 cents, 4 cents and 6 cents in the Evansville market during the time Purex was attempting to test the market in that area.

3. *In Other Markets.*

At the times the Purex Company introduced its newly designed bottle and handle in other trade areas throughout the country, Clorox systematically countered with such "promotional devices" as price-off labels, coupons on the bottle, newspaper coupons, merchandising packs, and self-

liquidating premiums, which were generally offered for periods of four or five weeks at a time. These promotions were put on in different local and regional areas throughout the country, the majority of which were utilized from May through August 1958, in the following recorded market areas: Atlanta, Georgia; Los Angeles and San Francisco, California; Chattanooga and Nashville, Tennessee; and the Pacific Northwest. In fact, Mr. Eric Bellingall, Vice President of the Advertising Agency handling the Clorox account testified that: "We drew up a list and had ready a group of these promotions and we got a list of dates when Purex was moving across with its (new) bottle."

When questioned about such promotions, Mr. Bellingall further testified as follows:

> "Your Honor, you generally don't wait in most instances to let him get too much of an inroad. Now, we had this research of promotions that I had discussed and as Trimpe reported that the new bottle had shown up in this territory, and so forth, we would then move to counter with one of this pool of things.
>
> "We have used as different devices, price off labels, the coupon on the bottle, the newspaper coupon, and so on, and in some territories, we did not meet it with a promotion, but tried to meet it with whatever increase there was in an advertising schedule.
>
> . . . "Sometimes we won't wait for the full effect of the competitor's promotion to take place with the consumer, that is, if he moves with a promotion, we may elect to move simultaneously or as close to simultaneously as we can. In other instances, and this can depend on holidays and so forth, we wait until we get a better reaction from our distributors in the area, and then try to go in to prevent the second pur-

chase. Am I clear there, where a promotion might do a sampling job for the competitor and we would move against the time that we would judge that the woman would be going back for a second bottle. We don't want her to be setting up a habit of purchasing the thing that she has been temporarily attracted to by a promotion, so there is a variety of timings in this activity."

XII. Subsequent to the Acquisition By P & G On August 1, 1957, Clorox's Market Share of the Total Household Liquid Bleach Sales (On Both a Quart Equivalent Basis and a Consumer Dollar Basis) Has Increased Substantially.

The following table of comparable bi-monthly periods, before and after P & G acquired Clorox, prepared from the Neilsen reports, shows that for the months of August-September 1956, Clorox's market share, on a 32 oz. equivalent basis, was 44.9% and that in August-September 1957 and in each similar bi-monthly period thereafter Clorox's market share increased, until in August-September 1960 it enjoyed a market share of 49.2%, an increase of 4.3 percentage points in the four years subsequent to the acquisition. Similarly, the table shows that from the October-November 1956 period Clorox's market share increased from 45.3% to 48.9% in the same months of 1960, an increase of 3.6 percentage points, and that from the December-January pre-acquisition period to the comparable 1960-1961 period, its market share increased by 3.7 percentage points, or from 45.4% to 49.1%. The table also shows that Clorox's market share reflects a similar increase from the amount shown in each of the other three bi-monthly periods prior to the acquisition to the amounts shown in

each of the comparable bi-monthly periods in 1960-1961, for increases of 2.7, 3.1, and 2.3 percentage points respectively. Also reflected in the table is an average annual increase from 45.3% in the 1956-57 pre-acquisition period to 48.6% in the 1960-61 period, or an average annual increase of 3.3 percentage points.

TABLE VII

Comparable Bi-Monthly Periods Before and After P & G Acquired Clorox (on a 32 oz. Equivalent Basis)

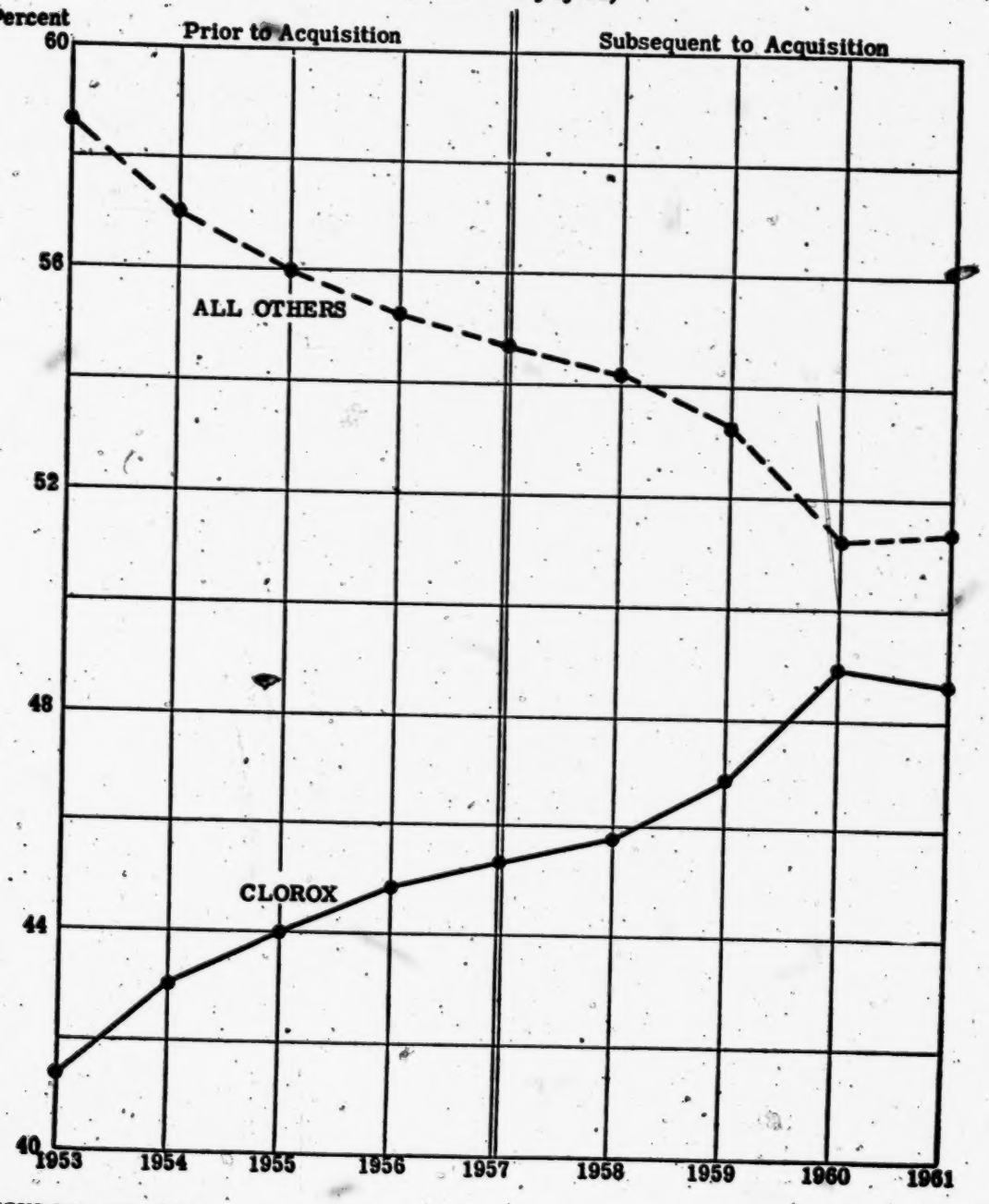
Clorox Market Share

	1956-57	1957-58	1958-59	1959-60	1960-61
Aug.-Sept.	44.9	45.5	46.5	47.9	49.2
Oct.-Nov.	45.3	45.2	45.8	48.9	48.9
Dec.-Jan.	45.4	45.5	47.0	48.6	49.1
Feb.-Mar.	45.7	45.7	47.0	48.6	48.4
Apr.-May	44.9	45.7	47.1	48.8	48.0
June-July	45.7	46.9	47.2	49.7	48.0
Average	45.3	45.8	46.8	48.8	48.6

SOURCE: RX 134-B.

The following graph clearly reflects the increase in Clorox's market share and the decrease in the market share of "All Others," before and after the acquisition, on a 32 oz. Equivalent Unit Basis. It will be noted that the *trend* of increase in Clorox's market share and the *trend* of decrease in the market share of "All Others" accelerates significantly subsequent to August 1, 1957, the date of acquisition.

MARKET SHARE - CLOROX AND ALL OTHERS
32 OZ. EQUIVALENT UNIT BASIS
(Years End July 31)



SOURCE: RX 134A.

The following table, also prepared from the Neilsen reports, makes the same comparisons on a consumer dollar basis and shows an even greater increase in Clorox's market share from the periods immediately preceding the acquisition to the comparable 1960-61 periods than is reflected in table VII prepared on a 32 oz. equivalent basis. For example, this table shows an increase from August-September 1956 to August-September 1960 in Clorox's market share from 48.0% to 52.4%, or an increase of 4.4 percentage points; from October-November 1956 to October-November 1960, an increase of 3.4 percentage points, and similar increases in each of the other comparable periods shown in the table down to and including the June-July 1961 period, which shows an increase of 2.7 percentage points over the June-July 1957 period. The table also shows an average annual increase from the 48.4% in the 1956-57 pre-acquisition period to 51.9% in the 1960-61 period, or an average annual increase of 3.5 percentage points.

TABLE VIII

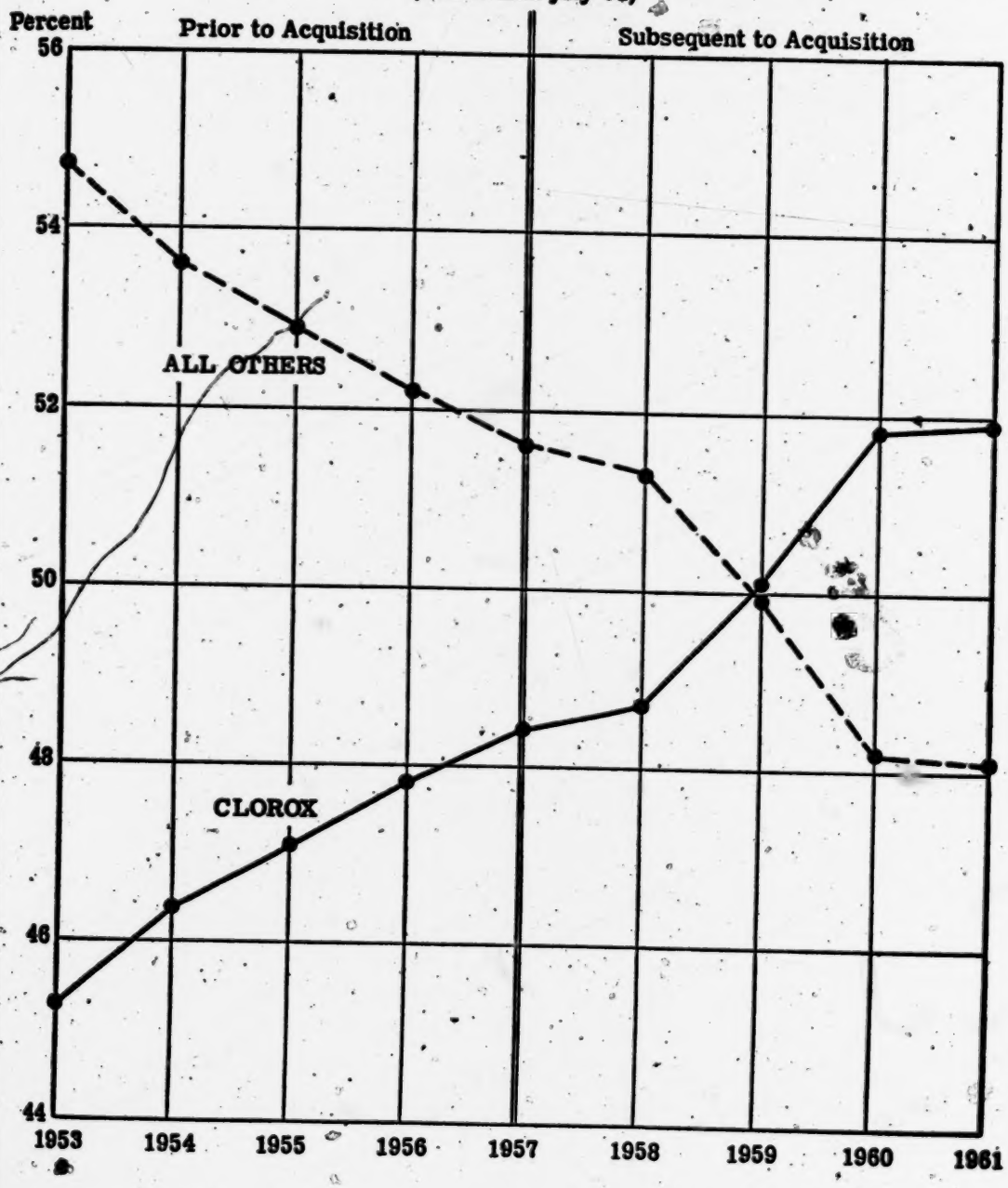
Comparable Bi-Monthly Periods Before and After P & G Acquired Clorox (on a Consumer Dollar Basis)

	Clorox Market Share				
	1956-57	1957-58	1958-59	1959-60	1960-61
Aug.-Sept.	48.0	48.4	49.6	50.9	52.4
Oct.-Nov.	48.6	48.2	49.3	51.9	52.0
Dec.-Jan.	48.4	48.6	50.3	51.7	52.3
Feb.-Mar.	48.8	48.6	50.3	51.7	51.7
Apr.-May	48.0	48.8	50.5	52.0	51.6
June-July	48.8	49.6	50.4	52.5	51.5
Average	48.4	48.7	50.1	51.8	51.9

SOURCE: RX 135-B.

MARKET SHARE - CLOROX AND ALL OTHERS
DOLLAR BASIS AT COST PRICE TO CONSUMERS

(Years End July 31)



SOURCE: RX 135A.

The preceding graph also clearly shows the increase in Clorox's market share and the decrease in the market share of "All Others," before and after the acquisition on a Consumer Dollar Basis. It will be noted that the *trend* of increase in Clorox's market share and the *trend* of decrease in the market share of "All Others," subsequent to the acquisition, accelerates at an even greater rate on the Consumer Dollar Basis than is reflected in the graph prepared on a 32 oz. Equivalent Basis.

XIII. Clorox and Purex Market Shares In Pacific, Southwest and West Central Regions Combined.

At the original hearings, the respondent submitted a tabulation of household liquid bleach bi-monthly sales in the Nielsen Pacific, Southwest, and West Central Territories combined, for the period June-July 1957, through October-November 1957, on a unit basis. (RX 91) This tabulation shows that during this period Clorox's share of the market in those areas declined until Purex and Fleecy-White's combined share was larger than that of Clorox. However, the abnormality of that selected period is evident from the following chart, showing for the same territories the percent of market shares of Clorox, Purex and Fleecy-White on a bi-monthly basis, from February-March 1957, through October-November 1958, the latest available data then of record. The dotted line portion of this graph shows the period included in respondent's exhibit (RX 91) referred to above. It is evident from this graph that not only did Clorox catch up and pass Purex and Fleecy-White combined by April 1958, but that the Purex share of the market declined below what it was prior to P & G's acquisition of Clorox in August 1957. (RX 91 and CX 668)

Findings As to the Facts

There were submitted by respondent at the remand hearing, tabulations showing the market share of Clorox on a 32 ounce equivalent unit basis in those same areas for the years 1953 to 1961 (RX 136). There was also submitted at this hearing by Commission's counsel an exhibit taken from Nielsen Food Index showing the shares of Clorox, Purex and others on a consumer dollar basis for this area. From an examination of these figures, it is apparent that the relative position of Clorox and Purex, as indicated in the following graph, has been substantially maintained during the subsequent period 1958 to 1961. The only change indicated is an increase of about one percentage point in the market share of Clorox. For that reason, no attempt is made to extend the graph to reflect the latter period.

XIV. The Effect of the Acquisition of Clorox Chemical By The Respondent P & G May Be To Suppress The Competition Of Not Only Purex But Other Small Competitors.

A. AS TO THE PUREX COMPANY.

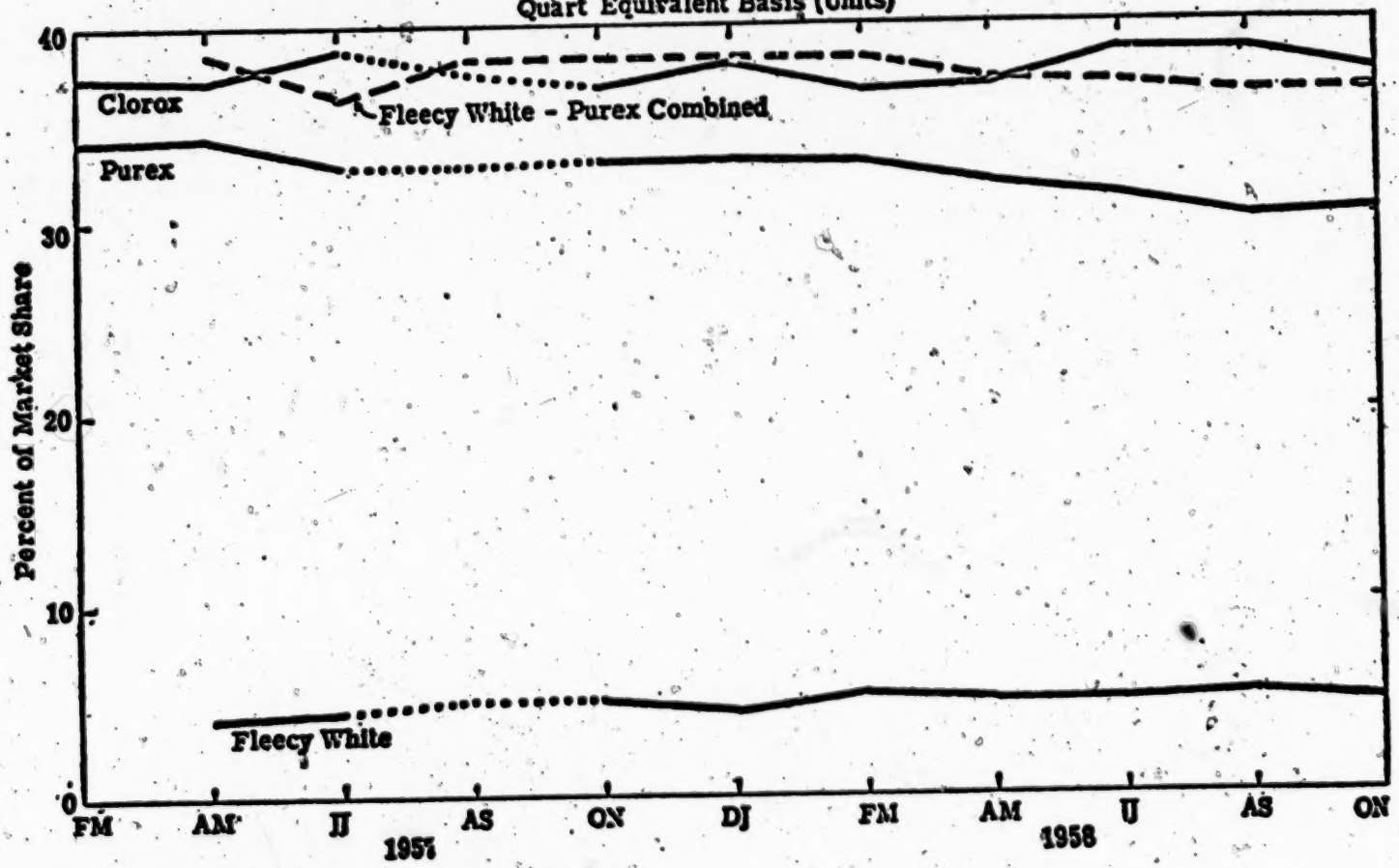
According to the testimony of the President of the Purex Company:

> "The acquisition of Clorox by Procter & Gamble, in our opinion, will have a serious effect upon Purex's business and Purex's ability to compete in the liquid bleach business, particularly if the same promotion devices which are normally used by Procter & Gamble are applied to the liquid bleach business."

B. AS TO THE LINCO PRODUCTS CORPORATION.

As hereinbefore indicated, this Company is respondent's principal local competitor in the Chicago, Illinois, terri-

A. C. NIELSEN CO.
PACIFIC, SOUTHWEST, WEST CENTRAL REGIONS COMBINED
MARKET SHARES
Quart Equivalent Basis (Units)



Note: Dotted Lines refer to data from RX 91.

tory. The President of that company testified with respect to the effect upon his business of the acquisition of Clorox Chemical by respondent P & G:

> "Well, I would say that this acquisition would create a situation where Linco Company will have a hard time to compete. When you stop to look at the resources that they have and the type of promotion that they put up when they buy or put out a new item, you can see that things are very serious. When they start a saturating campaign—that means radio, newspaper, TV, plus sampling, coupons, all that put together, including floor displays in the stores, which they would be able to get following all its advertising; and not only that, but they would be able to get probably more shelf space than competition, and all that together would eliminate the small manufacturer like us."

C. As to the Rose-Lux Chemical Company.

An official of the Rose-Lux Chemical Company, manufacturer of "Rose-X Bleach" brand of household liquid bleach, when asked what effect the acquisition by P & G of Clorox Chemical will have upon his company, testified:

> "Well, it's bound to hurt our business and it's bound to decrease our sales."

D. As to the J. L. Prescott Company.

An official of the J. L. Prescott Company, manufacturer of the "Dazzle" brand of household liquid bleach, hereinbefore mentioned, when asked what effect, in his opinion, the acquisition of Clorox Chemical by P & G would have upon his business, testified:

> "Well, it is our feeling that if approximately the same promotions are continued that the Clorox Chemical Company used, and in addition to that, things

such as coupons, so much off on the label, that type of promotion added to it would definitely be harmful to our business."

E. As to the Sunlight Chemical Corporation.

The President of the Sunlight Chemical Corporation of Rumford, Rhode Island, when asked what some of the competitive factors are which determine whether or not his company sells household liquid bleach, testified:

> "I think our main competitor selling liquid bleach is the amount of money that our competitors have to spend for advertising. I do not think it is the product itself of our competitors that we fear as competition because all good brands of bleach are, chemically speaking, identical. They bear a different trade name. It is the ability of the larger companies to spend tremendous amounts of money in advertising that gets them the business instead of the smaller company like ourselves."

When asked specifically what effect the acquisition of Clorox Chemical by P & G would have on his business, he testified:

> "—I still think it would be more difficult for us to sell with a stronger competitor. It seems to me that is only logical. The stronger your competitor, the more resourceful, the more experienced, the more money he has, the more business he should get, and less we should get.
>
> "So I say almost unqualifiedly that we will suffer by this taking over of Clorox by Procter & Gamble."

F. As to the Savol Company.

A partner of the Savol Chemical Company of Hartford, Connecticut, hereinbefore mentioned, when asked what effect the acquisition of Clorox Chemical by respondent P & G would have on his business, testified:

"Frankly, we have learned to live with Clorox. As an individual I am a little bit apprehensive if Procter & Gamble goes on with the method of advertising, method of sampling, method of coupons, and the method of sales that they have used with Procter & Gamble products, both to the wholesaler and to the individual stores, of what they may do to the bleach business.

"Again, I am speaking as an individual. We have a little business. We are trying to get along. We are not trying to coop in or take in the entire world. We are making a living. If and when the advertising, if Procter & Gamble would go out with advertising such as they have with other of their products, it would take very little to put us out of business because there isn't enough of a spread or a profit that we are making.

"And that is the thing that troubles me a little bit, and I can't help but be a bit apprehensive of it."

G. As to the Gardiner Manufacturing Company.

The President of the Gardiner Manufacturing Company of Buffalo, New York, hereinbefore mentioned, testified that he generally followed the Clorox price structure in selling to the trade, and when asked what effect the acquisition of Clorox Chemical by P & G would have upon his business, testified as follows:

"Well, I am scared of it, definitely, because of their larger capacity, purchase, advertising matter—makes it that they can cover the trade at a much lower cost than I can. They have a much larger sales force, which is selling their other products, which can also promote Clorox. The entire business really scares us because of the possibilities of what could happen."

H. As to Jones Chemicals, Inc.

The President of Jones Chemicals, Inc., of Caledonia, N. Y., hereinbefore mentioned, when asked what effect, if

any, the acquisition of Clorox Chemical by P & G would have upon his business, testified:

> "If Clorox—runs along the way they have been running, in the experience that I have had with them for 27 years, then I feel that my company or any of our associates could meet them in the market place and operate satisfactory as we have in the past. If they become a more aggressive merchandiser, getting away from the newspaper technique of influencing sales through newspaper advertising and go to the more, you might say, dynamic form of merchandising such as only soap people know how to employ, then people like myself would be in trouble."

I. As to B. T. Babbitt Company.

The B. T. Babbitt Company had long been a competitor of P & G in the detergent and cleanser field. As hereinbefore indicated, it acquired Chemicals, Inc., in August 1956, which manufactured a household liquid bleach which sold under the brand name "Vano" in and around San Francisco, California. The Babbitt Company continued to manufacture and sell this product until about April 1958, when it decided to discontinue manufacturing its household liquid bleach.

The Chairman of the Board and Treasurer of this company testified that his firm had a policy since approximately 1953 not to compete unnecessarily with the "soapers," referring to soap manufacturers. When asked what effect, if any, the acquisition of Clorox Chemical by P & G would have on the Vano liquid bleach business, he testified:

> "From this point on, it isn't going to have any effect, because several months ago we decided to discontinue manufacturing the product."

Since the witness was testifying in June 1958, it is apparent that the decision to discontinue the manufacture was shortly prior to that date, or about April 1958. He further testified that:

> "We acquired the Vano Liquid Bleach in August of 1956 and have not promoted the product or advertised the product since the franchise of Clorox was so strong, so I feel that one of the contributing factors to our decision to discontinue the product was the acquisition of Clorox by Procter & Gamble, since it was obvious that we would not, under these conditions, entertain any thought of establishing a satisfactory franchise on Vano Liquid Bleach."

XV. The Addition of Clorox to the P & G Line of Soaps, Detergents, and Cleansers Will Add Merchandising Strength and Support to Clorox Which Was Not Available to the Clorox Chemical Company.

There is an abundance of evidence in this case that there is a definite relationship between soap products, detergents, household cleansers and household liquid bleach, such as Clorox. This is apparent from their very nature, the uses to which they are placed by the housewife, and the way in which they are placed, grouped and displayed on the shelves of the grocery stores, and the promotional effort that is put behind those items. As pointed out by an official of one of the Clorox competitors:

> "The multi-product manufacturer can maintain stronger sales reports at the retail level. This is an aid in getting shelf space. The multi-product manufacturer normally has lower sales cost, so he has more promotion power; this is an aid in getting shelf space. The more products a manufacturer in our general commodity class sells to the grocery store at a profitable volume, of course, the more power he has to pro-

mote, and all these things are aids in getting shelf space."

Another competitor testified that household liquid bleach is very definitely adaptable to the promotional techniques used by soap companies. He pointed out that household liquid bleach is used by 95% of the housewives in the United States, and that when such an item is so universally used, it is very adaptable to merchandising techniques.

XVI. The Industry-wide Concentration of the Production and Sale of Household Liquid Bleach May Be Increased.

While the acquisition of Clorox Chemical by P & G in and of itself did not immediately result in increased industry-wide concentration in the production and sale of household liquid bleach, the record indicates that the results flowing from the acquisition already have resulted in some increased concentration and may well, in time, result in even more increased concentration in the production and sale of household liquid bleach.

For example, as a result of Purex's unfortunate experience at the hands of Clorox, when it attempted to test market its improved bleach and container in Erie, Pennsylvania, and Evansville, Indiana, Purex decided that its only opportunity to increase its sales and expand its territory was through acquisition, and it therefore acquired the Fleecy-White brand of household liquid bleach, thus increasing the concentration in that industry.

Another example is the decision of the B. T. Babbitt Company to discontinue the sale of its Vano brand of household liquid bleach, as a result of the acquisition of Clorox Chemical by P & G.

In addition, it would appear reasonable to expect P & G, with its financial resources available for the advertising

and promotion of Clorox at any time and any place, and to the extent it may deem desirable, together with its admitted managerial, advertising and promotional expertise, to continue to increase the Clorox share of the market at the expense of its smaller and less resourceful competitors.

XVII. The Market Share Position of Clorox Liquid Bleach Before and After Acquisition.

On page 12 of the respondent's "Proposed Findings of Fact and Conclusions, after Remand" the respondent states:

> "The Commission's Opinion plainly indicates the significance which it attaches to evidence respecting the *trend* * of market shares. At page 4 of its Opinion it properly notes that no conclusion can be reached with respect to the substantiality or materiality of any post-acquisition Clorox market share increase, which is claimed to be a result of the acquisition, without consideration of and comparison with the '*pre-acquisition growth trend of Clorox.**'"

The respondent also states on pages 12 and 13 of its "Proposed Findings":

> "Nielsen data respecting market shares in the household liquid bleach industry are compiled and reported on both a 32-ounce equivalent unit basis and on a consumer dollar basis. The 32-ounce equivalent unit basis is preferable to the consumer dollar basis as a reflection of market conditions or market share data because it measures the actual volume of merchandise moving through grocery stores, and is not influenced by retail price changes, temporary or otherwise."

* Emphasis supplied.

"[*Comment:* Statistical data used throughout these findings with respect to household liquid bleach moving through grocery stores in the United States are based upon the Nielsen Food Index Reports and exhibits prepared therefrom which were offered in evidence. The accuracy of Nielsen figures was stipulated by both parties at the instance of complainant in the initial hearings (Tr. 2066A-2066B) and reaffirmed by counsel for both parties during the hearings on remand (Tr. 6275).]"

The hearing examiner accepts the above statements.

The respondent then includes tables on pages 14 and 15 of its "Proposed Findings" showing the annual changes in Clorox's market share of the total sales of household liquid bleach in the United States, moving through grocery stores, for each of the four years preceding and for each of the four years subsequent to the acquisition, on (1) a 32 oz. Equivalent Unit Basis and (2) a Consumer Dollar Basis, indicating the percentage point change in each year, before and after acquisition, in both tables.

The hearing examiner accepts the presentation in both tables to this extent.

The respondent then proceeds to show the "Total Change" and the "Average Annual Change" in the percentage point change, of Clorox's market share before and after the acquisition in both tables and contends (on page 16) that since there is only a small difference in the "Average Annual Change" in the four years subsequent to the acquisition, "there is no significant difference between the post and pre-acquisition growth trend of Clorox."

This contention the hearing examiner rejects for the reason that the use of the "Average Annual Change" rather than the *annual trend* in the change in Clorox market share conceals the actual pre-acquisition and post-

acquisition *growth trend* of Clorox, the importance of which the Commission stressed in its Opinion of June 15, 1961.

It is believed that the *annual trend* in the change in the market share of Clorox before and after the acquisition is much more significant and a more reliable index than the *average annual change* in such market share, as used by the respondent in its "Proposed Findings of Fact." This is particularly true in the instant case since the record reveals that although Clorox's market share increased consistently both before and after the acquisition, it also clearly shows that the *rate of increase*, on both a consumer dollar basis and a 32 oz. equivalent basis, slowed perceptibly and constantly from August 1, 1953 to August 1, 1957, the date of acquisition, and that immediately following the acquisition the rate of increase reversed its downward trend and increased at an accelerated rate from August 1, 1957 to August 1, 1960. Also, as hereinbefore indicated, the annual trend in the change of Clorox's market share can be correlated with Clorox's expenditure for promotional activities during the four years subsequent to the acquisition. Also, as previously indicated, the decline in the trend in Clorox's market share from August 1, 1960 to August 1, 1961 is definitely traceable to the substantial decrease in Clorox's promotional expenditures during this same period of time.

CONCLUSIONS

The acquisition in this proceeding presents a novel question, one that has never been adjudicated by either the Federal Trade Commission or the courts in a formal proceeding. It is what might be called a conglomerate type of acquisition, or merger, in that the Clorox Chemical Company, the acquired corporation, was engaged in the

sale and distribution of household liquid bleach, a product which respondent Procter & Gamble, the acquiring corporation, had never manufactured or sold. This product, however, is distributed to the public mainly through grocery stores and is used principally in the home as an adjunct to laundry soaps, detergents, and abrasive cleansers, and thus might be considered complementary to such products, which are the principal products manufactured and sold by respondent.

To determine whether this acquisition is in violation of Section 7 of the Clayton Act, as amended, attention must be given to that industry in which the acquired corporation was engaged, and an attempt made to evaluate the impact on competition in that industry growing out of the acquisition. In order to do that, it is necessary to take into consideration the size and experience of the acquiring corporation in the conduct of its business prior to the acquisition, the manufacture and sale of products sold by it over the past few years, and then to make an evaluation of what the normal result probably will be when a corporation such as Procter & Gamble, the acquiring corporation, enters into the other industry, and utilizes the same methods of operation that it utilized in its prior fields of endeavor.

Following this pattern, or approach to the problem in this case, we find that the respondent herein is, and has been for a number of years, a financially powerful and aggressive commercial organization which depends on advertising and sales promotion practices and methods described in the above findings, through which, and by which, it has succeeded in becoming the largest manufacturer and distributor of soaps and detergents in the United States, and a leading manufacturer of other household products

such as abrasive cleansers. The respondent is recognized as one of the largest, if not the largest advertiser, in the United States. In addition to its national advertising campaigns, it has effectively engaged in aggressive competitive sales promotion programs, few of which had been used by the acquired corporation, Clorox Chemical, the leader in the household liquid bleach industry, prior to the acquisition, although some competitors of Clorox Chemical had used some of such programs.

From the foregoing Findings as to the Facts, therefore, it is concluded that as hereinbefore indicated, the line of commerce in this case is household liquid bleach; the sections of the country involved are the entire United States and the nine sections, or regions, described above. It is also concluded that one of the results of the acquisition of Clorox Chemical by the respondent, P & G, probably will be the substantial lessening of competition between the respondent-owned Clorox and the smaller manufacturers and distributors of household liquid bleach, in the United States, and the definite tendency to create a monopoly in the respondent P & G in the household bleach industry, based on one or more of the following factors:

A. The dominant market position in the household liquid bleach industry held by Clorox, which it, under control of the respondent, has been able to increase as a result of the acquisition and the various advertising campaigns, sales promotion programs and devices engaged in since the acquisition.

B. Respondent's financial and economic strength and advertising and promotional experience as compared with its competitors in the household liquid bleach industry.

C. Respondent's ability to command consumer acceptance of its products and to acquire and retain valuable

shelf space in independent and chain grocery stores as a result of its advertising and promotional experience and financial resources.

D. The competitive position or share of market enjoyed by Clorox, under respondent's control, in the production and sale of household liquid bleach has been enhanced to the detriment of actual and potential competition, and as hereinbefore shown, the decline in the pre-acquisition *growth trend* of Clorox has been reversed and its post-acquisition *growth trend* has responded directly to the substantial promotional expenditures made by Clorox under P & G ownership. It can fairly be anticipated that, if Clorox, a wholly owned subsidiary of respondent P & G, continues its present methods of promotion and advertising, its dominant competitive position will be further enhanced.

E. The increasing tendency of concentration of competitors in the household liquid bleach industry.

F. The ability of Clorox, through its aggressive P & G inspired advertising and sales promotion methods and devices, to prevent the entry of additional competitors into the household liquid bleach industry, and to prevent the competitors it already has from expanding by normal methods of competition.

G. Furthermore, according to the testimony of officials of competing manufacturers and distributors of household liquid bleach, there is an apparently well-founded fear on their part that the aggressive advertising and sales promotion methods of respondent P & G used by Clorox in the household liquid bleach industry will result in serious injury to their business. The evidence introduced at the recent hearings showing a decline in the market share of some of Clorox's smaller competitors, since the acquisition,

indicates that such fear expressed by at least some of these competitors was, in fact, well-founded. As hereinbefore mentioned, the record indicates that it was not the policy of the Clorox Chemical Company, the acquired corporation, to meet the sales promotions or test marketing of its smaller competitors with aggressive counter-promotions and retaliatory tactics. It had attained its leading position in the household liquid bleach industry mainly by national advertising. However, the evidence indicates that it has been the policy of Clorox, since its acquisition by P & G, to meet, and meet vigorously, the promotions and test marketing of its competitors. As hereinbefore related, these retaliatory tactics have been used especially against Purex and Roman Cleanser, the second and third largest household liquid bleach manufacturers in the industry.

To summarize the basis for the foregoing conclusions, the deciding factor is the ability of Procter & Gamble's conglomerate organization to shift financial resources and competitive strength through a broad front of different products and markets and its ability to strategically alter the selected point of greatest impact as time, place and market conditions require. It is not necessary that the conglomerate enjoy a predominate position in any industry or market, although in this particular case Procter & Gamble does enjoy such a position in the soap and detergent industry. The test of conglomerate power is whether a corporation is able to concentrate its competitive efforts at one point by shifting its financial resources and competitive strength from one industry or market to another. Procter & Gamble possesses this power and ability.

In view of the facts set forth in the aforesaid Findings, and Conclusions, and in the light of the avowed purpose of the amendment to Section 7 to protect small units in an

industry, it is concluded that the effect of the acquisition of the Clorox Chemical Company by respondent the Procter & Gamble Company may be to substantially lessen competition and to tend to create a monopoly in the production and sale of household liquid bleaches in the United States in violation of Section 7 of the Clayton Act, as amended December 29, 1950, and an order of divestiture should be entered to restore, insofar as possible, the competitive situation in the household liquid bleach industry existing prior to the acquisition.

The foregoing legal conclusion is supported by the House Committee Report: [1]

> "If for example, one or a number of raw material producers purchases firms in a fabricating field (i.e. a 'forward vertical' acquisition), and if as a result thereof competition in that fabricating field is substantially lessened in any section of the country, the law would be violated, even though there did not exist any competition between the acquiring (raw material) and the acquired fabricating firms.
>
> *"The same principles would, of course, apply to backward vertical and conglomerate acquisitions and mergers.*
>
> *"The enactment of the bill will limit further growth of monopoly and thereby aid in preserving small business as an important competitive factor in the American economy."* *

In the House of Representatives, Representative Boggs of Louisiana in discussing the bill to amend Section 7 of the Clayton Act, made the following statement with respect to the purpose and effect of the bill:

---

[1] H. R. Rep. 1191, 81st Cong., 1st Sess., p. 11 (1949).
* Emphasis supplied.

Conclusions

"A third avenue of expansion—and this is one of the most detrimental movements to a free enterprise economy—is the conglomerate acquisition. This is the type which carries the activities of giant corporations into all sorts of fields, often completely unrelated to their normal operations. In times such as these, when big corporations have such huge quantities of funds, they are constantly looking around for new kinds of businesses to enter. By this process they build up huge business enterprises which enable them to play one type of business against another in order to drive out competition." * [1]

The U. S. Supreme Court, in the Dupont case, also supports this legal conclusion in the following language: [2]

"The first paragraph of Section 7, written in the disjunctive, plainly is framed to reach not only the corporate acquisition of stock of a competing corporation where the effect may be substantially to lessen competition between them, *but also corporate acquisitions of stock of corporations, competitor or not, where the effect may be either* (1) to restrain commerce in any section or community, or (2) tend to create a monopoly of any line of commerce . . .

"We hold that *any acquisition* by one corporation of all or any part of the stock of another corporation, *competitor or not*, is within the reach of the Section whenever the reasonable likelihood appears that the acquisition will result in a restraint of commerce or in the creation of a monopoly of any line of commerce. . . ." *

In accordance with the foregoing Findings and Conclusions, the following order is entered.

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[1] 95 Cong. Rec. 11496 (1949).
[2] 353 U. S. 586, pages 590-91-92.
* Emphasis supplied.

ORDER OF DIVESTITURE

IT IS ORDERED that respondent The Procter & Gamble Company, a corporation, and its subsidiaries, officers, directors, agents, representatives and employees, shall cease and desist from violating Section 7 of the Clayton Act, as hereinbefore set forth in the Findings hereof, and shall divest itself of all assets, properties, rights or privileges, tangible or intangible, including but not limited to, all plants, equipment, trade names, trademarks and goodwill acquired by said respondent as a result of the acquisition of the assets of the Clorox Chemical Company, together with the plant, machinery, buildings, improvements, equipment and other property of whatever description which has been added to them in such a manner as to restore it as a going concern in the manufacture and sale of household liquid bleach in which the said Clorox Chemical Company was engaged, in substantially the same productive capacity as was possessed by the said Clorox Chemical Company at, and immediately prior to, the time of the said acquisition by respondent The Procter & Gamble Company.

IT IS FURTHER ORDERED that by such divestiture none of the stocks, assets, rights, or privileges, tangible or intangible, acquired or added by respondent, shall be sold or transferred, directly or indirectly, to anyone who is at the time of divestiture, or for two years before said date was, a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with, or under the control, direction, or influence of respondent or any of respondent's subsidiary or affiliated corporations.

/s/ EVERETT F. HAYCRAFT,
EVERETT F. HAYCRAFT,
Hearing Examiner.

February 28, 1962.

Petition for Review

[Caption Omitted]

PETITION FOR REVIEW *

(Filed March 22, 1962)

To the Honorable Joseph W. Shea, Secretary:

The complaint in this proceeding, issued September 30, 1957, alleged that respondent The Procter & Gamble Company (hereinafter referred to as "Procter") had violated Section 7 of the Clayton Act as amended December 29, 1950 (64 Stat. 1125; 15 U.S.C. § 18) by acquiring on August 1, 1957 the assets and business of the Clorox Chemical Company. In its answer respondent denied all charges of illegality.

The taking of evidence in this proceeding commenced on December 16, 1957 and the hearings were initially concluded on February 12, 1959. On June 17, 1960 the Hearing Examiner rendered an Initial Decision in which he held that Procter had violated Section 7 of the Clayton Act. Both parties filed appeals to the Commission from that Initial Decision, and on March 14, 1961 the Commission heard argument on both appeals.

On June 15, 1961 the Commission issued its Order Remanding The Proceeding To The Hearing Examiner. The Commission's Order of Remand held that the record as then constituted did not provide an adequate basis for determining the legality of respondent's acquisition. The Order specified definite lines of additional inquiry for the purpose of providing "a more complete and detailed post-acquisition picture" which would allow "the *Commission*

* Under the circumstances of this proceeding, we are uncertain with respect to the application of the Commission's new and old Rules of Practice. We are, therefore, also filing our Notice of Intention to Appeal in accordance with Rule 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings, effective at the time the complaint was served in this proceeding.

an informed hindsight upon which *it* can act." (Opinion of the Commission, p. 5)

While not waiving the objection to the legality of the Commission's Order of Remand,* respondent appeared at the further hearings before the Hearing Examiner, which were held on December 1, 1961 and on December 12, 1961. On December 12, 1961, counsel for both parties rested and the Hearing Examiner closed the taking of testimony. Thereafter, on February 28, 1962, the Hearing Examiner filed his "Second Initial Decision" in this proceeding in which he again held that Procter had violated Section 7 of the Clayton Act by acquiring the assets and business of the Clorox Chemical Company. This Decision was served upon respondent Procter on March 12, 1962.

Under these circumstances, we submit, the proceeding automatically comes before the Commission for review without the necessity of an appeal or request by either party. However, in an abundance of caution and without waiver of any rights, we hereby petition the Commission to review the Second Initial Decision of the Hearing Examiner in this proceeding.

At the hearings held before the Hearing Examiner on December 1, 1961, counsel for the Commission completely ignored the lines of additional inquiry spelled out by the Commission in its Order of Remand. Counsel for the Commission was content to introduce evidence merely purporting to show Clorox's post-acquisition promotional activities and certain market share statistical data. Counsel for the Commission did not introduce additional evidence relating to the following matters, among others, which the Commission had directed were to be explored:

---

* Respondent moved before the Hearing Examiner for dismissal on this ground, and herewith appeals from the denial of that motion.

1. Whether, and to what extent, Procter's production facilities and techniques have been utilized by Clorox.

2. Whether any use had been made of Procter's sales force in place of independent brokers.

3. Whether any competitor of Clorox has been adversely affected by the acquisition.

4. Whether there had been any change in the grocer's allocation of shelf space to Clorox and its competitors.

5. Whether there had been any coordination of the advertising and promotion of Clorox with Procter's products.

6. Whether any use had been made of national television advertising in merchandising Clorox.

The burden was upon counsel in support of the complaint to offer any evidence on these matters. We respectfully submit that failure to introduce any evidence in connection either with these lines of inquiry or with other subjects referred to or indicated in the Commission's Order of Remand and accompanying Opinion compels the inference that evidence on these matters would not have established that the acquisition resulted in any adverse effect on competition.

Many of the matters as to which the Hearing Examiner has made findings in his Second Initial Decision have been foreclosed by the Commission's Order of Remand. In addition, many of the findings and conclusions are either inconsistent with the Commission's Order and accompanying Opinion, unsupported by the evidence or both. We appeal from such findings and conclusions and enumerate some of them below.

The Questions Presented Upon Review Include the Following

1. Whether the evidence offered by counsel in support of the complaint at the hearings on remand is in accord-

ance with the lines of additional inquiry set forth in the Commission's Order of Remand? Respondent contends that it is not.

2. Whether the evidence adduced at the hearings on remand supports any finding or conclusion that this acquisition has or probably will result in a substantial lessening of competition or tendency to monopoly in accordance with the criteria established by the Commission for determining the legality of this acquisition? Respondent contends that *the evidence does not support* any such finding or conclusion. More specifically there is *no evidence to support the related detailed findings* of the Hearing Examiner, including the following:

> A. There is no proof that there was a decline in the pre-acquisition growth trend of Clorox which has been reversed.
>
> B. There is no proof that the post-acquisition growth trend of Clorox is a direct response to promotional and advertising expenditures made by Clorox.
>
> C. There is no proof that there has been an increase in the tendency of concentration of competition in the household liquid bleach.
>
> D. There is no proof that there is a causal relationship between the size and experience of Procter and the market position of Clorox.
>
> E. There is no proof that Procter's financial resources and experience in marketing its products will enhance the ability of Clorox to market its liquid bleach.

3. Whether there is any probative evidence that this acquisition may result in a substantial lessening of competition or tendency to monopoly? Respondent contends that there is none.

4. Whether the Hearing Examiner's proposed order of divestiture is justified by the evidence? Respondent contends that it is not justified.

It is respectfully submitted that under the circumstances here present, review by the Commission of this proceeding, involving in essence a case of first impression in the application of Section 7 of the Clayton Act, is in the public interest.

Respectfully submitted,

ROYALL, KOEGEL, HARRIS & CASKEY

By: /s/ KENNETH C. ROYALL
KENNETH C. ROYALL
Attorneys for Respondents

Dated: March 22, 1962

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners:

PAUL RAND DIXON, *Chairman*
SIGURD ANDERSON
WILLIAM C. KERN
PHILIP ELMAN
EVERETTE MACINTYRE

In the Matter of THE PROCTER & GAMBLE COMPANY, a corporation.	Docket No. 6901

ORDER GRANTING PETITION FOR REVIEW

Counsel for respondent having filed on March 22, 1962, a petition for review of the initial decision of the hearing examiner in this proceeding pursuant to Section 4.20 of

the Commission's Rules of Practice, and counsel supporting the complaint interposing no answer or objection thereto; and

The Commission having determined that said petition should be granted:

IT IS ORDERED that said petition for review of the hearing examiner's initial decision be, and it hereby is, granted.

By the Commission.

/s/ JOSEPH W. SHEA
JOSEPH W. SHEA,
Secretary.

[SEAL]

ISSUED: April 4, 1962

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners:

PAUL RAND DIXON, *Chairman*
SIGURD ANDERSON
PHILIP ELMAN
EVERETTE MACINTYRE
A. LEON HIGGINBOTHAM, JR.

In the Matter of THE PROCTER & GAMBLE COMPANY, a corporation.	Docket No. 6901

ORDER DIRECTING REARGUMENT

This proceeding is before the Commission on respondent's appeal from the second initial decision of the hearing examiner. On appeal from the first initial decision of the hearing examiner, the Commission, on June 15, 1961, re-

manded the case to permit the introduction of additional evidence on the competitive effects of the challenged acqusition.

At oral argument of the second appeal on July 11, 1962, a question arose as to whether the remand order limited the scope of the issues before the Commission for determination. The Commission is of the view that, since the entire record of the case is now before it, its final decision and order should be based on the entire record, and not merely on evidence adduced before the examiner on the remand. In view of the question which has arisen as to the proper interpretation of the remand order, the Commission believes it desirable now to set that question at rest by scheduling a reargument of all contested issues of fact and law, presented by the entire record, before the full Commission. In the latter connection, the Commission has noted that only one of its present members participated in the issuance of its remand order of June 15, 1961, and that such member was not present at the oral argument on July 11, 1962. Reargument will remove any uncertainty as to the scope of the issues now before the Commission for determination, and will permit such determination to be made by all the members of the Commission as now constituted. Accordingly,

IT IS ORDERED that the appeal in this case be, and it hereby is, scheduled for reargument, on the basis of the entire record, on Wednesday, January 30, 1963, at 2:00 p.m., with an allowance of forty-five minutes to each side for presentation of argument.

By the Commission.

/s/ JOSEPH W. SHEA
JOSEPH W. SHEA,
Secretary.

[SEAL]

ISSUED: November 30, 1962

Motion to Dismiss the Complaint

[Caption Omitted]

MOTION TO DISMISS THE COMPLAINT

(Filed December 21, 1962)

Comes now the respondent, THE PROCTER & GAMBLE COMPANY, by its attorneys, and respectfully moves this Commission for an order vacating and setting aside this Commission's order for reargument, filed November 30, 1962, and for an order dismissing the complaint herein. This motion is made on the grounds that this Commission has failed to proceed with reasonable dispatch to conclude this proceeding in violation of Section 6(a) of the Administrative Procedure Act [5 U.S.C. § 1005(a)] and also for the reasons heretofore set forth in the respondent's motion to dismiss made before the Examiner upon the remand hearings herein and summarized in paragraph numbered 23 of a complaint filed by respondent in the United States District Court for the District of Columbia, which said complaint is annexed hereto and made a part hereof as Exhibit A.*

In support of this motion respondent shows:

1. The Commission's complaint in this proceeding was issued on September 30, 1957. The taking of testimony commenced in December 1957. The evidence was taken in various cities throughout the United States. Counsel for both parties were afforded the widest latitude in the presentation of testimony and documentary evidence. The hearings were concluded on February 12, 1959, when each party stipulated that its case was closed. The record at this time consisted of more than 6300 pages of transcript, plus several hundred exhibits.

* There were four exhibits annexed to such complaint. These consisted of papers which are on file with this Commission and have not been reproduced here.

2. The Initial Decision of the Trial Examiner was filed on June 17, 1960. An appeal from this decision was taken to this Commission. On June 15, 1961, this Commission entered an order remanding this proceeding to the Hearing Examiner for the reception of certain additional evidence. Such remand was ordered by the Commission on its own motion and had not been applied for or sought by either party to the proceeding.

3. In its opinion this Commission plainly and unequivocally held that the record before it did not support the complainant's charges. It said: *"The record as presently constituted does not provide an adequate basis for determining the legality of this acquisition."* * In other words, the complainant had failed to sustain its burden of making out a case.

4. Respondent maintained, and still maintains, that it was thereupon entitled to a dismissal of the proceeding. And, indeed, the Commission itself recognized the propriety of such a disposition. It said: *"In the circumstances we might dismiss the complaint. . . ."*

5. Instead of following this proper course, the Commission held that on the remand the Examiner should consider post-acquisition evidence respecting events subsequent to the close of the original record. The stated purpose of such remand was to determine whether any such evidence supported the conjectures and speculations in which the Trial Examiner had indulged. As stated by this Commission, the remand was for the purpose of determining, in the light of hindsight, whether prophecies and unsupported guesswork as to probable anticompetitive results, had in fact been borne out.

6. The respondent thereafter instituted an action in the United States District Court for the District of Columbia,

* Emphasis supplied throughout unless otherwise indicated.

by filing the complaint which is annexed hereto as Exhibit A. In said action respondent challenged the Commission's order of remand and asked that the remand hearings be temporarily and permanently enjoined and that the entire proceeding before the Commission be dismissed. The defendants in the action in the District Court were: (a) The Federal Trade Commission; (b) the members of the Commission, individually and as Commissioners; and (c) the Hearing Examiner. All were represented by the same counsel.

7. In said District Court action hearings were had upon respondent's application for a temporary restraining order to prevent the implementation of the remand. In answer to respondent's claims that the order of remand was burdensome, oppressive and unwarranted in the circumstances, and was violative of the Administrative Procedure Act and the Rules of this Commission, all of the defendants, through their counsel, urged upon the Court that the evidence to be submitted on the remand would be entirely documentary in nature; would be directed to the time period subsequent to the close of the evidence in the original record; and would be so presented as to make possible an early disposition of the proceeding. In this connection, the defendants, including the Commission and its five individual members, through counsel, stated to the District Court:

> "The only evidence which will be offered on behalf of the Federal Trade Commission in the proceeding before that Commission bearing Docket #6901 will consist (except to the extent necessary in rebuttal to any evidence herein introduced by plaintiff) of documentary evidence all of which has been shown to plaintiff's counsel today, and a witness to authenticate such documents; and . . . that the introduction

of such evidence will not consume more than two hearing days, December 1, 1961, and December 4, 1961."

8. Such statements were made for the avowed purpose of convincing the District Court that the remand would not impose any real burden on respondent and would not result in any appreciable protraction of the proceeding.

In reliance upon the foregoing statements and conditioned thereon, the District Court entered its order reading:

> "*Wherefore*, it is on this 30th day of November, 1961, ordered that the motion for temporary restraining order is denied without prejudice." *

9. The hearing on the remand then proceeded. Additional evidence was adduced with respondent reserving all its rights. The court action was thereupon dismissed on the consent of all parties without prejudice.

10. One of respondent's basic complaints in the court action was that, in making the remand under the circumstances shown in the complaint, this Commission had violated § 6(a) of the Administrative Procedure Act [5 U.S.C. Section 1005(a)] which directed "every agency" to "proceed with reasonable despatch to conclude any matter presented to it." The representation to the Court by the attorney for this Commission and the individual Commissioners that complainant's proof would be concluded within two days could have no purpose or meaning other than that the Commission would proceed with dispatch to dispose of the matter before it.

11. Now a year has passed since said representation to the District Court and this proceeding has not been ter-

* The Examiner at the outset denied respondent's motions attacking the validity of the remand.

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minated. On the contrary, although there has been another thorough briefing and submission to the Hearing Examiner, another decision by the Hearing Examiner, then another briefing and argument before this Commission, and another final submission to this Commission, there has been no final decision. Instead, this Commission on November 30, 1962—precisely one year after the representation to the District Court that there would be a prompt disposal of the proceeding—has set this case down for reargument on the entire record.

12. A considerable amount of further delay is envisaged. For, by its order for reargument, this Commission apparently contemplates a reargument and a reconsideration of the entire record. In addition, the order for reargument points out that the original record, prior to the first remand, had only been considered by one of the Commissioners presently sitting. This recital by the Commission means, we assume, that the entire voluminous initial record—with its thousands of pages—must be considered by four Commissioners who have no acquaintance therewith. For surely the Commissioners unacquainted with the record would feel required fully to familiarize themselves therewith. Accordingly, the end of this proceeding is not in sight.

13. This Commission's ostensible reason for ordering reargument, to wit, a change in the personnel of the Commission, does not, we submit, present an appropriate cause for violating the Administrative Procedure Act. Administrative proceedings may not be endlessly prolonged merely because of changes in Commission personnel. Indeed, the argument runs in a vicious circle. The more the proceedings are prolonged—as by the original remand herein—the greater is the likelihood that changes in personnel will take place. And such changes, in turn, are

now made a reason for still further delay. We repeat—this proceeding should have been disposed of upon the first appeal to the Commission, where it was specifically held that the record established no violation of Section 7.

14. In any event, this Commission has no power at this time to reconsider the record made prior to the remand. Having found that record insufficient to sustain the complaint, the proceeding may not be reopened generally without compliance by the Commission with its own Rule 3.27 dealing with the reopening of proceedings.* No compliance with that rule has been even attempted.

15. As shown in the District Court complaint, Exhibit A annexed hereto, the long drawn out proceeding has already cost respondent tremendous sums of money. The continued pendency of the proceeding has resulted in a portion of respondent's business being operated in an atmosphere of doubt and uncertainty.

16. This Commission has recognized that remand after full trial "is costly, time-consuming and, to some extent, harassing to respondents" (*Modern Methods, Inc. and Harold Brooks*, Dkt. 7568). In the present case the remand followed by this order for reargument makes the foregoing language applicable *a fortiori*.

17. The Commission's actions in this proceeding, taken as a whole and including the present order for reargument, not only violates the reasonable dispatch provisions of the Administrative Procedure Act, but violates its own rules respecting the conduct of proceedings and the constitutional requirements of due process of law, as more fully alleged in Exhibit A annexed hereto.

18. This Commission has shown in the past that it is profoundly interested in the integrity and fairness of its

* This citation is to the "old" rules of this Commission. The substance of Rule 3.27 is now embodied in Rule 5.7.

own processes. Indeed, the failure to conduct a proceeding with fairness has led to a dismissal of the complaint. See *Modern Methods, Inc. and Harold Brooks*, Dkt. 7568.

WHEREFORE it is respectfully submitted that this Commission should now put an end to this already long and overextended proceeding and dismiss the complaint herein. By so doing it would establish that it proposes to conduct matters before it in such fashion as gives full effect to the rules of law under which it functions, as well as the rules which the Commission itself has promulgated.*

Respectfully submitted,

KENNETH C. ROYALL,
FREDERICK W. R. PRIDE,
ROBERT D. LARSEN,

By /s/ KENNETH C. ROYALL,
Attorneys for Respondent
THE PROCTER & GAMBLE COMPANY

Dated: December 21, 1962.

* See In the Matter of Chain Institute, Inc., Docket No. 4878, where in denying respondent's motion to reargue a matter before the Commission because of changes in the Commission's personnel, this Commission stated,

> ". . . A judge appointed to fill a vacancy on the bench does not set about to reopen and retry previously adjudicated cases simply because he is a new member.
>
> "The machinery of the quasi-judicial agency, like the courts, contemplates a continuing process; it looks to current litigation, not past litigation. If our procedures were otherwise, delay and inaction would surround enforcement of the statutes committed to the Commission's jurisdiction. To grant the present motion would be to require a third review of a voluminous record made many years ago."

[Exhibit A attached to the "Motion to Dismiss the Complaint" is reproduced at page 467a of the Joint Appendix.]

Order Denying Motion to Vacate Order

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners:

PAUL RAND DIXON, *Chairman*
SIGURD ANDERSON
PHILIP ELMAN
EVERETTE MACINTYRE
A. LEON HIGGINBOTHAM, JR.

In the Matter of THE PROCTER & GAMBLE COMPANY, a corporation.	Docket No. 6901

ORDER DENYING MOTION TO VACATE ORDER FOR REARGUMENT AND TO DISMISS THE COMPLAINT

Upon consideration of respondent's motion, filed December 21, 1962, for an order vacating the Commission's order directing reargument filed November 30, 1962, and for an order dismissing the complaint herein, and

The Commission having previously determined, for the reasons stated in its order directing reargument, that reargument of this matter before the full Commission is in the public interest and will facilitate prompt and comprehensive determination of the case,

IT IS ORDERED that the motion be, and it hereby is, denied.

By the Commission.

[SEAL]

/s/ JOSEPH W. SHEA,
JOSEPH W. SHEA,
Secretary.

ISSUED: January 2, 1963

Final Order

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners:

PAUL RAND DIXON, *Chairman*
SIGURD ANDERSON
PHILIP ELMAN
EVERETTE MACINTYRE
A. LEON HIGGINBOTHAM, JR.

In the Matter of THE PROCTER & GAMBLE COMPANY, a corporation.	Docket No. 6901

FINAL ORDER

This matter has been heard by the Commission on respondent's appeal from the initial decision of the hearing examiner filed on February 28, 1962. The Commission has rendered its decision, denying the appeal in all respects, and adopting the findings of fact and conclusions of law made by the hearing examiner to the extent consistent with the opinion accompanying this order. Other findings of fact and conclusions of law made by the Commission are contained in that opinion. For the reasons therein stated, the Commission has determined that the order entered by the hearing examiner should be modified and, as modified, adopted and issued by the Commission as its final order. Accordingly,

IT IS ORDERED that:

I.

Respondent, The Procter & Gamble Company, a corporation, and its officers, directors, agents, representatives,

employees, subsidiaries, affiliates, successors and assigns, within one (1) year from the date this order becomes final, shall divest, absolutely and in good faith, all assets, properties, rights and privileges, tangible and intangible, including but not limited to, all plants, equipment, trade names, trademarks and good will, acquired by The Procter & Gamble Company as a result of the acquisition by The Procter & Gamble Company of the assets of Clorox Chemical Company, together with all plants, machinery, buildings, improvements, equipment and other property of whatever description which have been added to the property of Clorox Chemical Company since the acquisition.

II.

By such divestiture, none of the assets, properties, rights or privileges, described in paragraph I of this order, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, respondent or any of respondent's subsidiary or affiliated corporations, or owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of The Procter & Gamble Company, or to any purchaser who is not approved in advance by the Federal Trade Commission.

III.

If respondent divests the assets, properties, rights and privileges, described in paragraph I of this order, to a new corporation or corporations, the stock of each of which is wholly owned by The Procter & Gamble Company, and if respondent then distributes all of the stock in said corporation or corporations to the stockholders of The

Procter & Gamble Company, in proportion to their holdings of The Procter & Gamble Company stock, then paragraph II of this order shall be inapplicable, and the following paragraphs IV and V shall take force and effect in its stead.

IV.

No person who is an officer, director or executive employee of The Procter & Gamble Company, or who owns or controls, directly or indirectly, more than one (1) percent of the stock of The Procter & Gamble Company, shall be an officer, director or executive employee of any new corporation or corporations described in paragraph III, or shall own or control, directly or indirectly, more than one (1) percent of the stock of any new corporation or corporations described in paragraph III.

V.

Any person who must sell or dispose of a stock interest in The Procter & Gamble Company or the new corporation or corporations, described in paragraph III, in order to comply with paragraph IV of this order may do so within six (6) months after the date on which distribution of the stock of the said corporation or corporations is made to stockholders of The Procter & Gamble Company.

VI.

No method, plan or agreement of divestiture to comply with this order shall be adopted or implemented by respondent save upon such terms and conditions as shall first be approved by the Federal Trade Commission.

VII.

As used in this order, the word "person" shall include all members of the immediate family of the individual

specified and shall include corporations, partnerships, associations and other legal entities as well as natural persons.

VIII.

Respondent shall periodically, within sixty (60) days from the date this order becomes final and every ninety (90) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of its actions, plans, and progress in complying with the provisions of this order and fulfilling its objectives.

By the Commission, Commissioner Anderson concurring in the result.

[SEAL]

/s/ JOSEPH W. SHEA,
JOSEPH W. SHEA,
Secretary.

ISSUED: November 26, 1963

[Caption Omitted]

OPINION OF THE COMMISSION

BY COMMISSIONER ELMAN:

The Commission's complaint, issued on September 30, 1957, charged that respondent's acquisition on August 1, 1957, of all the assets of Clorox Chemical Company violated Section 7 of the Clayton Act, as amended (15 U. S. C. § 18). After extended hearings, the hearing examiner rendered an initial decision in which he found the acquisition unlawful and ordered divestiture. On appeal, the Commission, concluding "that the record as presently constituted does not provide an adequate basis for informed determinations as to the actual or probable effects of respondent's acquisition . . . on competition," and hence that the record "should be supplemented in this respect to the

end that all of the issues involved in the case may be finally and conclusively disposed of on their merits," ordered on June 15, 1961, that the initial decision be vacated, that the case be remanded to the hearing examiner for the reception of additional evidence, and "that after receipt of such additional evidence the hearing examiner make and file a new initial decision on the basis of the entire record herein."

On remand, additional evidence was introduced, and the hearing examiner rendered a second initial decision in which he again found the acquisition unlawful and ordered divestiture. In the course of oral argument on July 11, 1962, before the Commission on appeal from this decision, a question was raised whether the Commission was free to decide the case on the basis of the entire record, or whether it must assume that the record on the first appeal did not support a finding of illegality and confine its attention to the additional evidence introduced on remand. The Commission, believing that the public interest required that the case be decided on the entire record, directed reargument of all contested issues of fact and law (order of November 30, 1962). Reargument was held on January 30, 1963. The case is now ready for final decision on the entire record.

I. "Law of the Case"

We meet at the threshold the contention that notwithstanding the Commission's order of reargument, in which its intention to consider the issues of this case on the entire record was clearly announced, such a course is barred by the principle of "law of the case." The principle, that an appellate tribunal will not reconsider its own rulings of law on a subsequent appeal in the same case, is not, we think, applicable here.

The language of the Commission's order of remand, quoted above, should dispel any inference that a ruling on the sufficiency of the evidence to support the complaint was intended. The basis of the order, in fact, was that the record was inadequate for the making of any ruling, and hence required supplementation; decision of all the issues of the case was expressly postponed by the Commission pending receipt of the additional evidence; and the hearing examiner was directed to file a new initial decision on the basis of the entire record.

It is true that in its opinion accompanying the order of remand, the Commission expressed the view that the post-acquisition data on which the hearing examiner had relied heavily in his first initial decision did not support the examiner's finding of illegality. However, even if this tentative expression of opinion be deemed a ruling of law, plainly it affected only a single, narrow aspect of the case. Inasmuch as the post-acquisition evidence introduced in this case is not a material factor in our decision (see JA 461a-462a), whatever ruling the Commission may earlier have made as to the relevance or sufficiency of such evidence to support a finding of illegality is, at this point, moot.

In any event, the doctrine of law of the case is not an inexorable command, but "only a discretionary rule of practice." *United States* v. *United States Smelting, Refining & Mining Co.*, 339 U. S. 186, 199; see Note, 65 Harv. L. Rev. 818, 822 (1952). Every consideration of fairness and of the public interest weighs in favor of our now deciding this case on the entire record. For one thing, only one of the present members of the Commission (Commissioner Anderson) participated in the decision of the first appeal. It would be a forced and unnatural exercise for us to consider the evidence introduced on remand in isolation

from the rest of the record or attempt to divine how our predecessors would have reacted to that additional evidence. If we are to decide this case fairly and rationally, we must be free to draw our own inferences from the entire record.

In addition, it is a widely recognized basis for relaxing application of the doctrine of law of the case that the law has changed in the interim. Note, *supra*, at 822, n. 15. The expressions of opinion accompanying the order of remand were based on the view that post-acquisition evidence is crucial in a case of this sort—a view which has been undermined, if not rejected, by two supervening decisions of the Supreme Court (see discussion at JA. 423a-428a). Accordingly, we feel free to consider the issues of this case unfettered by the observations made in the earlier opinion.

Nor can respondent argue that it has been unfairly surprised by being compelled to argue the case on the entire record. It was to eliminate any such possibility of unfairness that the Commission ordered reargument and gave the parties full opportunity to brief and argue the case on the entire record.

The consequence of the Commission's order of remand has been a regrettable delay in the final disposition of an already protracted litigation. However, delays of this kind are perhaps inevitable where, as here, difficult questions of law are presented which the courts have not authoritatively resolved. In any event, the remedy for such delays is not decision of the case in a truncated posture, but clarification of the issues through reasoned decision on the entire record.

II. The Facts and Background

The complaint alleges that the effect of the acquisition by respondent, The Procter & Gamble Company (Procter), of the assets of Clorox Chemical Company (Clorox), "may

be substantially to lessen competition, or to tend to create a monopoly," in the manufacture of household liquid bleach throughout the nation.

Household liquid bleach is a 5¼% sodium hypochlorite solution which is used in the home as a germicide and disinfectant and, more importantly, as a whitener in the washing of clothes and fabrics. To a certain extent, the use of household liquid bleach overlaps that of other products, especially powdered bleach; also, liquid bleach in somewhat stronger solution has industrial uses. Nevertheless, the parties appear to agree that household liquid bleach is a distinctive product, recognized as such by the consumer and by the trade, and that it has no close substitutes (see JA 429a).

At the time of the acquisition, Clorox was the nation's leading manufacturer of household liquid bleach. Its annual sales of slightly less than $40,000,000 represented almost 50% of the national total,[1] and its market share had been growing steadily for at least five years prior to the acquisition.

Market Shares of Household Liquid Bleach Manufacturers
(Consumer Dollar Basis)

Brand	*Percentage of Total U. S. Sales*
Clorox	48.8
Purex	15.7
Roman Cleanser	5.9
Fleecy White	4.0
Hilex	3.3
Linco	2.1
Total	79.8
All Other Brands	20.2

[1] Complaint counsel and respondent's counsel have stipulated the accuracy of the A. C. Nielsen Food Index, a compendium of statistics on the sales volume of various grocery products. The Index gives the following picture of household liquid bleach sales in 1957:

As the table in note 1 shows, Clorox's principal competitor is the Purex Corporation. Unlike Clorox, which is engaged almost exclusively in the manufacture of household liquid bleach, Purex manufactures a number of products, including an abrasive cleanser (Old Dutch Cleanser), a toilet soap (Sweetheart), and detergents (Trend and News). Total sales of all its products were approximately $50,000,000 in 1957.

The table shows that in 1957 Clorox and Purex between them accounted for almost 65% of the nation's household liquid bleach sales, and, together with four other manufacturers, for almost 80%. The remaining 20% was divided among 132 listed (in Dun & Bradstreet), and a number of unlisted (roughly 91) small producers. (These figures may be somewhat overstated.) In addition, there seems to be a large number of extremely small, so-called "garage" or "down-cellar" bleach producers. Only eight manufacturers of liquid bleach have assets of more than $1,000,000; very few, in fact, have assets of more than $75,000.

Most manufacturers of household liquid bleach sell at least part of their production to grocery stores and supermarkets for resale to the consumer under the stores' own brand name. These private or house brands, however, appear to account for only a small proportion of the total sales of liquid bleach.[2] Clorox sells no private brand liquid bleach—all of Clorox's bleach is sold under the "Clorox" brand name—and Purex very little.

The equipment, raw materials and labor required in the manufacture of liquid bleach are relatively inexpensive, and neither the product nor its process is the subject of a patent or trade secret. However, owing to its weight, to

[2] In the Nielsen Index, the private brand production of all manufacturers is included in the 20.2% residual category. The Safeway supermarket chain is evidently the only retailer of household liquid bleach that actually manufactures its private brand.

its low sales price per unit, and to the fact that it is ordinarily sold in bottles, household liquid bleach is expensive to ship. Freight, which the manufacturer pays for—the liquid bleach industry uniformly sells on a delivered-price basis—, commonly averages more than 10% of unit cost. For this reason, household liquid bleach cannot profitably be distributed outside a radius of perhaps 300 miles from the point of manufacture. Most manufacturers, since they have only a single plant, are limited to a regional market. Indeed, Clorox, which has 13 plants distributed throughout the country, is the only producer selling on a national scale. Although Purex has as many plants as Clorox, it does not distribute its bleach in the northeast or middle-Atlantic states. In 1957, Purex bleach was available in less than 50% of the national market. The other manufacturers of liquid bleach are still more limited territorially.[3]

As a result of the territorial limitations of Clorox's competitors, the percentage figures in the table in note 1 do not give an adequate picture of Clorox's position in the various regions of the country. For example, Clorox's seven principal competitors did no business in New England, metropolitan New York or the middle-Atlantic states, and Clorox's share of the liquid bleach sales in these areas was 56%, 64%, and 72%, respectively. Even in areas where the principal competitors of Clorox were active, Clorox's share of total liquid bleach sales was high. Except in metropolitan Chicago and the west-central states, Clorox accounted for at least 39%, and often for a much higher percentage, of liquid bleach sales in the various regions.

It is not immediately apparent how Clorox was able to obtain a leading position in the household liquid bleach in-

[3] For example, 60% of the sales of Linco, the sixth-largest-selling liquid bleach brand (see note 1, *supra*), are made in metropolitan Chicago. There was evidence that some liquid bleach brands are marketed only in the Italian neighborhoods of New York City.

dustry. Clorox is not sold to the consumer at a lower price than other bleaches; on the contrary, it is a premium brand that commonly sells for several cents per quart more than regional, local or private brands. Nor is Clorox a better bleach than other brands; all household liquid bleaches are chemically identical. Nor is the industry plagued by inadequate productive capacity or shortages; none of Clorox's competitors is producing at full capacity, and, as was mentioned earlier, the manufacturing process is relatively simple and inexpensive.

The explanation seems to lie in the way in which household liquid bleach is marketed. It is a low-price, high-turnover consumer product sold mainly to housewives in grocery stores. As a consequence of the growth of the self-service grocery store or supermarket, the consumer is no longer dependent upon the storekeeper's advice in purchasing commonly used, inexpensive household items such as liquid bleach. The housewife purchases the brand that she sees displayed prominently on the shelf or that is familiar and attractive to her by reason of advertising or sales promotions. Since the amount of shelf space that the grocer gives a particular brand is largely a function of the sales volume of the brand, it is apparent that the success of a particular brand of liquid bleach depends upon the manufacturer's successfully pre-selling it, whether by means of attractive packaging, a low price, advertising and sales promotion efforts, or otherwise. Cf. *United States* v. *Lever Bros. Co.*, 216 F. Supp. 887, 893 (S.D.N.Y. 1963).

Prior to its acquisition by Procter, Clorox had not been active in "sales promotions," a term which embraces such selling devices or gimmicks as price-off labels, two-for-one offers, coupons, free samples, premiums and contests. But it had advertised extensively. In 1957, for example, Clorox spent $1,750,000 for newspaper advertising, $560,000 for

magazine advertising, $258,000 for radio and billboard advertising, and $1,150,000 for television advertising. Advertising expenditures, thus, were equal to almost 10% of total sales.

As a result of Clorox's long-continued mass advertising, its trade name had become widely known to and preferred by the consumer notwithstanding its high price and lack of superior quality. Most manufacturers of liquid bleach lack the financial resources to advertise or promote extensively. Purex, it is true, is a large advertiser, but its advertising —and *a fortiori* that of Clorox's lesser competitors—is very possibly less effective than Clorox's because of Purex's territorially limited distribution. It is apparent that the effectiveness of advertising in media of mass circulation normally is enhanced if the product is sold nationally. See, e.g., Bain, *Advantages of the Large Firm: Production, Distribution, and Sales Promotion*, 20 J. of Marketing 336, 340, 344 (1956). Obviously, it is relatively inefficient to pay for national advertising coverage, e.g., in national magazines or network television, without having national distribution of the advertised product. In general, moreover, it is rarely possible to adjust the dissemination of an advertising message to the precise bounds of the territory in which the advertised product is distributed. In addition, in a nation such as ours, which has a very mobile population, a brand obtainable by the consumer in every part of the country is likely to be better known than and preferred to a product marketed only regionally or locally.

The allegiance to a particular brand that is created by mass advertising and promotion tends, in the case of low-cost, high-turnover household products, to be somewhat ephemeral; the housewife is easily lured from her accustomed brand by promotional and advertising efforts on the part of rival manufacturers. The record in this case con-

tains a graphic illustration of the volatile quality of consumer brand preferences. In Erie, Pennsylvania, Purex launched a major "attack" on Clorox's theretofore entrenched position (Clorox enjoyed more than 50% of the sales in the area) by marketing Purex liquid bleach in a new container and by promoting the "improved" product intensively by means of price-off labels and coupons. Within a few weeks, Purex, which previously had done no business in the area, had won a market share of more than 30%. Clorox immediately counter-attacked, however, and, by means of strenuous promotional efforts (consisting of price-off and premium offers), coupled with intensive advertising, soon forced Purex's share down to 7%.

At the time of its acquisition of Clorox, Procter was one of the nation's 50 largest manufacturers, with total net sales in 1957 of $1,156,000,000. Procter manufactures a wide range of low-priced, high-turnover household consumer items sold through grocery, drug and department stores,[4] but prior to the acquisition of Clorox, it did not produce household liquid bleach. Procter's major locus of activity is in the general area of soaps, detergents and

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[4] In the answer to the complaint, respondent offered the following "list of the most important brands sold by respondent": *"Soaps, Detergents and Cleansers*: Ivory Soap—all-purpose bar soap; Ivory Flakes—mild all-purpose flake soap; Ivory Snow—mild all-purpose granulated soap; Camay—hard-milled perfumed toilet soap; Lava—pumice hand soap; Duz—detergent and granulated soap; Tide—heavy-duty detergent; Cheer—heavy-duty detergent; Dreft—light-duty detergent; Oxydol—heavy-duty detergent; Dash—low sudsing heavy-duty detergent; Joy—liquid general purpose detergent; Comet—scouring cleanser; Cascade—detergent for automatic dishwashers; Spic and Span—paint and linoleum cleaner; Zest—detergent toilet bar; *Food Products:* Crisco—vegetable shortening; Golden Fluffo—vegetable and lard shortening; Big Top—peanut butter and peanuts; Duncan Hines—prepared baking mixes—15 kinds; *Toilet Goods:* Crest—fluoridated toothpaste; Gleem—toothpaste; Drene—liquid shampoo; Prell—paste and liquid shampoo; Shasta—cream shampoo; Lilt—home permanent; Pin-It—home permanent; *Paper Products:* Charmin—household toilet tissue; Lady Charmin—household toilet tissue; Charmin—facial tissue; Charmin—paper napkins; Charmin—paper towels; Evergreen—industrial paper towels and tissue. On a consumer dollar basis, Procter in 1957 had 31% of the nation's total sales of toilet soap; 32%, dentifrices; 30%, lard and shortening combined; 19%, shampoo; and see p. 12 below.

cleansers.[5] In 1957, of total domestic sales, more than one half ($514,000,000) were in this field. In packaged detergents alone,[6] Procter's sales were $414,000,000, and this was 54.5% of the national total. In the household cleansing agents industry, Procter's principal competitors are Colgate-Palmolive and Lever Brothers. Together, these three firms account for more than 80% of total sales. Procter is the leading firm of the three. In 1957, total sales of Colgate-Palmolive and Lever Brothers were $291,000,000 and $250,000,000, respectively. There are no other firms in the industry of comparable size. Purex was the next largest after the "Big Three," with sales, as was noted earlier, of about $50,000,000 in 1957, followed by B. T. Babbitt, Inc., with sales of less than $22,000,000.

In the marketing of soaps, detergents and cleansers, as in the marketing of household liquid bleach, extensive advertising and sales promotion seem to be the key to success. Procter is one of the nation's leading advertisers. In 1957, it spent upwards of $80,000,000 on advertising (principally television advertising) in the United States, and was, in fact, the nation's largest advertiser in that year. In addition, it spent $47,000,000 for domestic sales promotions alone. (Procter's total domestic sales in 1957 were approximately $900,000,000.) Colgate-Palmolive and Lever Brothers, Procter's principal competitors, also rank high among the nation's largest advertisers.

The record in this case contains a striking example of the role of advertising and promotion in the household cleansing agents industry. In 1957, Procter introduced a

[5] Soaps, detergents and cleansers, we shall call, for the sake of simplicity, "household cleansing agents." The term is meant to exclude mops, waxes, polishes, brooms and other such relatively high-priced, specialty items used in household cleaning.

[6] The term "packaged detergents" embraces heavy-duty high-sudser detergents, heavy-duty low-sudser detergents, heavy-duty soaps, heavy-duty liquids, light-duty synthetics, light-duty liquids, and light-duty soaps.

new abrasive cleanser, which it called "Comet." Over a 22-month period, Procter spent $7,200,000 for the advertising and sales promotion of Comet; 20 months after it first appeared on the market, Comet had attained 36.5% of the national market in abrasive cleansers. (The abrasive cleansers industry had total sales of $53,000,000 in 1957—somewhat more than one-half the total sales of household liquid bleach in that year.) It would appear that Comet's success is traceable mainly to the intensive advertising and promotional efforts made on its behalf. (See generally *United States* v. *Lever Bros. Co.*, 216 F. Supp. 887 (S.D. N.Y. 1963); Klaw, "The Soap Wars: A Strategic Analysis," *Fortune*, June 1963, p. 122.)

Procter's acquisition of Clorox was the culmination of two years of study of the liquid bleach industry undertaken by its promotion department in order to determine the advisability of Procter's entering the industry. The first report from the promotion department observed that liquid bleach accounted for 90% of the large and expanding household bleach market and predicted that its ascendancy over powdered bleach would continue in the foreseeable future. The report, however, recommended not that Procter attempt to market its own brand of bleach, as it had repeatedly and successfully done with other household products, but rather that it purchase Clorox. Since, the report advised, "a very heavy investment" would be required for Procter to obtain a satisfactory market share for a new brand of liquid bleach, entry into the industry through acquisition of its leading firm was an attractive alternative. "Taking over the Clorox business . . . could be a way of achieving a dominant position in the liquid bleach market quickly, which would pay out reasonably well." The report predicted that Procter's "sales, distributing and manufacturing setup" could increase Clorox's share of the

market in certain areas where it was low and effect a number of savings that would increase the profits of the business considerably.

A subsequent report from the promotion department confirmed the earlier recommendation, emphasizing that Procter management would be able to make more effective use of Clorox's advertising budget and that the merger would enable advertising economies.

A few months after the second report was filed, Procter acquired the assets of Clorox in the name of a wholly owned Procter subsidiary, The Clorox Company, in exchange for stock of Procter having a market value of approximately $30,300,000.[7] At the time of the exchange, Clorox's assets were valued at $12,600,000.

Since the acquisition, the top management of Clorox has been placed in the hands of Procter officials, and some degree of integration of Clorox and Procter activities has taken place (see JA 463a). By and large, however, Clorox has been operated as a separate entity within the Procter organization.

III. The Legality of the Merger Under Section 7

A. Categories of Mergers

The hearing examiner, respondent, and complaint counsel concur in describing the merger of Clorox and Procter as "conglomerate." This term, far from denoting a homogeneous class of mergers, tells us only that the instant merger is neither conventionally "horizontal" nor conventionally "vertical." An analysis of each of these terms is

[7] The Procter shares received in the exchange were distributed to Clorox's shareholders, whereupon Clorox Chemical Company was dissolved. We shall refer loosely to the entire transaction as the merger of Clorox and Procter or the acquisition of Clorox by Procter.

necessary before we proceed further in the discussion of this case.

A horizontal merger, as ordinarily understood, is one between firms that make or sell the same product, or products which are close substitutes for each other. However, unless the firms actually operate within the same geographical market, the merger will have no immediate impact upon the market share of the acquiring firm—the hallmark of a conventional horizontal merger. Where the merger involves companies selling in different geographical markets (or, what may amount to the same thing, to different customer classes, cf. *Brillo Mfg. Co.*, F. T. C. Docket 6557 (decided July 31, 1963)), we have what has been termed a market-extension merger. See *Foremost Dairies, Inc.*, F. T. C. Docket 6495 (decided April 30, 1962). It may be a merger in which the acquired firm sells the same product as the acquiring firm and is a prospective entrant into the geographical market occupied by the acquiring firm. See *United States* v. *El Paso Natural Gas Co.*, 1962 CCH Trade Cases ¶ 70571 (D. Utah), prob. juris. noted, 373 U. S. 930; *Foremost Dairies, Inc.*, *supra*, pp. 48-49. Or the acquiring firm may be a prospective entrant into the market of the acquired firm. *Foremost Dairies, Inc.*, *supra*, pp. 49-50.

Another variant of the conventional horizontal merger is the merger of sellers of functionally closely related products which are not, however, close substitutes. This may be called a product-extension merger. The expression "functionally closely related," as used here, is not meant to carry any very precise connotation, but only to suggest the kind of merger that may enable significant integration in the production, distribution or marketing activities of the merging firms. An example of a merger enabling integration at the production level would be the merger of a liquid

bleach with a liquid starch manufacturer; the manufacturing processes involve many of the same raw materials and equipment. Integration at the level of physical distribution might occur in the case of products which, for example, are shipped together. Integration at the marketing level (including integration of advertising and sales-promotion activities) might result where products manfactured by the merging firms are sold to the same customers or through the same outlets, or are actually complementary.[8]

A vertical merger, conventionally understood, is one between firms at different points on the same chain of distribution, that is, firms which actually or potentially are in the relationship of supplier and customer. Rather similar effects on competition, however, may result from a merger involving the acquisition not of a supplier but of a supplier's supplier.[9] And effects akin to the "reciprocity" which such a merger fosters may flow from any merger involving firms that deal in common with other firms. Thus, the merger of two firms having common marketing outlets might faciltate tie-in or full-line forcing agreements.

Only when the various subcategories of horizontal and vertical mergers have been exhausted (and the foregoing discussion of such subcategories is intended to be suggestive

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[8] See Hale, *Diversification: Impact of Monopoly Policy Upon Multi-Product Firms*, 98 U. Pa. L. Rev. 320, 331-32 (1950). A complementary relationship between products exist "when a rise in the consumption or purchases of one cause a rise in the demand for the other. . . ." Boulding, Economic Analysis 226 (3d ed. 1955). See *United States* v. *Winslow*, 227 U.S. 202. See generally Bowman, *Tying Arrangements and the Leverage Problem*, 67 Yale L. J. 19 (1957). It has been suggested that a multi-product firm's activities be termed "divergent" when integration is enabled at the production level and the products are sold in different markets, and "convergent" when the products, though made through different processes, are sold through the same channels, by the same marketing techniques, or to the same customers. Thorp & Crowder, The Structure of Industry 146 (T.N.E.C. Monograph No. 27, 1941).

[9] See *Consolidated Foods Corp.*, F.T.C. Docket 7000 (decided November 15, 1962). Cf. Bigness and Concentration of Economic Power—A Case Study of General Motors Corporation, Staff Rep. of the Subcomm. on Antitrust and Monopoly of the S. Comm. on the Judiciary, 84th Cong., 2d Sess. 41 (1956).

only) do we reach the true diversification or conglomerate merger, involving firms which deal in unrelated products. Cf. H. R. Rep. No. 1191, 81st Cong., 1st Sess. 11 (1949). An extreme example might be the purchase of a newspaper kiosk in New York by a bakery in California.

The merger of Clorox and Procter may most appropriately be described as a product-extension merger. Packaged detergents—Procter's most important product category—and household liquid bleach are used complementarily, not only in the washing of clothes and fabrics, but also in general household cleaning, since liquid bleach is a germicide and disinfectant as well as a whitener. From the consumer's viewpoint, then, packaged detergents and liquid bleach are closely related products. But the area of relatedness between products of Procter and of Clorox is wider. Household cleansing agents in general, like household liquid bleach, are low-cost, high-turnover household consumer goods marketed chiefly through grocery stores and pre-sold to the consumer by the manufacturer through mass advertising and sales promotions. Since products of both parties to the merger are sold to the same customers, at the same stores, and by the same merchandising methods, the possibility arises of significant integration at both the marketing and distribution levels.

The functional relationship between household liquid bleach and products manufactured by Procter appears to hold even if we look beyond household cleansing agents to the food, paper and toilet products which round out the Procter line. They are also low-cost, high-turnover household consumer goods which are sold largely, although not entirely, through grocery stores and are heavily advertised and promoted.

By this acquisition, then, Procter has not diversified its interests in the sense of expanding into a substantially dif-

ferent, unfamiliar market or industry. Rather, it has entered a market which adjoins, as it were, those markets in which it is already established, and which is virtually indistinguishable from them insofar as the problems and techniques of marketing the product to the ultimate consumer are concerned. As a high official of Procter put it, commenting on the acquisition of Clorox, "While this is a completely new business for us, taking us for the first time into the marketing of a household bleach and disinfectant, we are thoroughly at home in the field of manufacturing and marketing low priced, rapid turn-over consumer products."

B. General Principles in the Interpretation and Application of Section 7

The lawfulness, under Section 7 of the Clayton Act, as amended, of the kind of merger involved in the instant case, is a question largely of first impression. In general, the conglomerate merger (in the broad sense of that term) has received little attention under the antitrust laws.[10] Its history of neglect appears to be due, first, to the erroneous view that Section 7 in its original form applied only to horizontal mergers[11]—a view which stultified enforcement of the antitrust laws against conglomerate mergers until the amendment of Section 7 in 1950—and, secondly, to economists' preoccupation with the number and size dis-

[10] The problems of conglomerate power occasionally arise, however, in the context of other provisions of the antitrust laws. See *United States* v. *Griffith*, 334 U.S. 100; *United States* v. *Swift & Co.*, 286 U.S. 106; *United States* v. *Swift & Co.*, 189 F. Supp. 885 (N.D. Ill. 1960); *Alexander Milburn Co.* v. *Union Carbide & Carbon Corp.*, 15 F.2d 678 (4th Cir. 1926); cf. *United States* v. *E. I. duPont de Nemours & Co.*, 188 Fed. 127 (Cir. Ct. D. Del. 1911).

[11] This view was ultimately rejected by the Supreme Court in *United States* v. *E. I. duPont de Nemours & Co.*, 353 U.S. 586. See *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 313, n. 21.

tribution of firms in a single market.[12] But at the same time that the conglomerate merger was being ignored by lawyers and economists, businessmen were resorting to it increasingly as a mode of corporate expansion. Today, many, perhaps most, morgers involving substantial firms are conglomerate, and concern has begun to be voiced.[13]

The absence of authoritative, specific precedents in this area compels us to look to basic principles in the interpretation and application of Section 7. The Commission and the federal courts have now had the benefit of more than a decade of enforcement of the amended Section 7, and the numerous decisions construing the statute include two by the Supreme Court. To the principles which have emerged, we turn for guidance in the instant case.

First. All mergers are within the reach of the amended Section 7, whether they be classified as horizontal, vertical

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[12] See, e.g., such assertions as, "The fact is that a truly conglomerate merger cannot be attacked in order to maintain competition, because it has no effect on market structure." Adelman, *The Antimerger Act*, 1950-60, 51 Am. Econ. Rev., 236, 243 (Papers and Proceedings, 1961). Cf. *United States* v. *Winslow*, 227 U.S. 202, 217. For a pathfinding study of the problems of the conglomerate merger under the amended Section 7, see Neal, *The Clayton Act and the Transamerica Case*, 5 Stan. L. Rev. 179 (1953).

[13] "In a word then, we find that the antitrust laws have failed to stem the horizontal and vertical merger movements of the 1890's and the 1920's, and have had no deterrent effect on the conglomerate merger movement of the 1950's and 1960's." Houghton, *Mergers, Superconcentration, and the Public Interest*, in Administered Prices: A Compendium on Public Policy 152, 158 (Comm. Print 1963). See Dirlam, *The Celler-Kefauver Act: A Review of Enforcement Policy*, in *id.*, at 109-10, 130; Federal Trade Commission, Report on Corporate Mergers and Acquisitions 50-51, 54 (1955); Mergers and Superconcentration: Acquisitions of 500 Largest Industrial and 50 Largest Merchandising Firms, Staff Rep. of the H. Select Comm. on Small Business, 87th Cong., p. 44 (Comm. Print 1962). A suggestive statistic in this connection is that between 1947 and 1958, the 50 largest manufacturing firms in the nation increased their share of total value added by manufacture from 17% to 23%; the top 100, from 23% to 30%; the top 150, from 27% to 35%; and the top 200, from 30% to 38%. Mergers and Superconcentration: Acquisitions of 500 Largest Industrial and 50 Largest Merchandising Firms, *op. cit. supra*, at 13. See also Collins & Preston, *The Size Structure of the Largest Industrial Firms, 1909-58*, 51 Am. Econ. Rev. 989 (1961). One economist has suggested that the increasing concentration of the nation's industrial assets in the hands of large firms is attributable to the conglomerate-merger movement. Houghton, *supra*, at 154-55.

or conglomerate, and all are to be tested by the same standard. This is plain not only from the statutory language, but from the legislative history as well: "[T]he bill applies to all types of mergers and acquisitions, vertical and conglomerate as well as horizontal, which have the specified effects of substantially lessening competition . . . or tending to create a monopoly." [14] The inclusion of conglomerate mergers within the scope of the statute cannot be dismissed as casual or inadvertent. This Commission's Report on the Merger Movement (1948), which played an important role in the deliberations leading to the amendment of Section 7, had emphasized the dangers presented by conglomerate mergers: "[T]here are few greater dangers to small business than the continued growth of the conglomerate corporation." *Id.*, at 59. Congress' clearly expressed concern with the conglomerate merger is in striking contrast to the preoccupation of lawyers and economists with tests that look only to the number and size distribution of firms in a single market, and is a challenge to this Commission and to the courts to devise tests more precisely adjusted to the special dangers to a competitive economy posed by the conglomerate merger.[15]

It must be stressed, however, that Congress, in seeking to bring "conglomerate" mergers within the reach of Section 7, did not thereby express the view that conglomerates are analytically a distinct merger class. Congress meant only that however a merger be characterized, its legal status under Section 7 is the same. As we have seen, even for purposes purely of description, the traditional three-

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[14] H.R. Rep. No. 1191, 81st Cong., 1st Sess. 11 (1949); see *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 317.

[15] "Section 7 should be able to check a merger producing or enhancing the power of a giant firm without reference to the effect on concentration ratios in any particular market." Dirlam, *supra*, note 13, at 105. See Bicks, *Conglomerates and Diversification Under Section 7 of the Clayton Act*, 2 Antitrust Bull. 175, 178 (1956).

fold classification—horizontal, vertical and conglomerate—is unsatisfactory without considerable further refinement. More important, these definitional distinctions import no legal distinctions under Section 7. The legal test of every merger, of whatever kind, is whether its effect may be substantially to lessen competition, or tend to create a monopoly, in any line of commerce in any section of the country.

Second. The Supreme Court has recently declared, "Subject to narrow qualifications, it is surely the case that competition is our fundamental national policy, offering as it does the only alternative to the cartelization or governmental regimentation of large portions of the economy." *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 372. This policy informs all the federal antitrust laws, but some more explicitly than others. Section 7 predicates illegality specifically on the probability of a substantial anti-competitive effect; like the other sections of the Clayton Act, it singles out a partciular class of business practices—corporate acquisitions—for especially strict antitrust scrutiny by the courts and the Commission. If the adverse effects on competition specified in Section 7 are proved, it will normally not be open to the respondent to show that redeeming social or economic benefits will flow from the acquisition.[16] In the words of the Supreme Court:

> "We are clear . . . that a merger the effect of which 'may be substantially to lessen competition' is not saved because, on some ultimate reckoning of social or

[16] The single exception is the failing-company defense (see *International Shoe Co.* v. *F.T.C.*, 280 U.S. 291, 299-303), which, although not mentioned in the statute, seems plainly to have been intended by Congress to be carried forward in the enforcement of the amended Section 7. See H.R. Rep. No. 1191, 81st Cong., 1st Sess. 6 (1949); S. Rep. No. 1775, 81st Cong., 2d Sess. 7 (1950). No contention has been made in this case that Clorox at the time of the acquisition was other than a profitable, healthy concern.

> economic debits and credits, it may be deemed beneficial. A value choice of such magnitude is beyond the ordinary limits of judicial competence, and in any event has been made for us already, by Congress when it enacted the amended § 7. Congress determined to preserve our traditionally competitive economy. It therefore proscribed anticompetitive mergers, the benign and the malignant alike, fully aware, we must assume, that some price might have to be paid." *Philadelphia National Bank, supra,* at 371.

While a broad Rule of Reason may not be read into Section 7, it is clear that mergers are not to be judged according to a so-called *per se* standard. In every Section 7 proceeding, the burden is on the complainant to prove that the merger will create a reasonable probability of a substantial lessening of competition or tendency to create a monopoly. This burden is not met, in any case, by invocation of a talismanic *per se* rule by which to dispense with the need for adducing evidence of probable anti-competitive effect. Congress declared neither that all mergers, nor that mergers of a particular size or type, are *per se* unlawful. In every case the determination of illegality, if made, must rest upon specific facts. There may be cases in which a relatively simple test of illegality is appropriate, as the Supreme Court has shown in the *Philadelphia National Bank* case, but this is possible only where consideration of the nature and circumstances of the merger in question indicates that such a test will provide an adequate basis for ascertaining whether the statute has been violated; and even in such cases no *per se* rule or conclusive presumpton of illegality is applied.[17]

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[17] The rule applied in the *Philadelphia National Bank* case was one of presumptive illegality. The Court did not suggest that the substantial change in the concentration ratio in the relevant market as a result of the merger created an irrebutable presumption that the merger would have the effects on competition specified in Section 7.

Third. The concept of competition which underlies the amended Section 7 has no simple or obvious meaning, and was defined by Congress neither in the statute itself nor in the course of the deliberations that led to its enactment. But some of its elements, at least, are clear. It has been observed by the Supreme Court that the "dominant theme pervading congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy."[18] Congress' emphasis on concentration reflected its deep concern with what economists would call the problem of oligopoly (see S. Rep. No. 1775, 81st Cong., 2nd Sess. 5 (1950)) —a problem that centers on undue or excessive market concentration. Indeed, the relationship between concentration (and related market-structure characteristics) and lessened competition is clearly, we think, at the core of Section 7. For this reason, the specific issues of this case must be placed in a larger frame of reference. Section 7 deals with the fundamentals of a free competitive economic system, and it is in the context of first principles that we must approach this case.[19]

In a market of, say, 100 sellers of roughly equal size, no seller need—or can—take into account his competitors' probable reactions in establishing his pricing or other busi-

[18] *Brown Shoe Co., supra,* at 315. See *Philadelphia National Bank, supra,* at 363; Bok, *Section 7 of the Clayton Act and the Merging of Law and Economics,* 74 Harv. L. Rev. 226, 306-07 (1960).

[19] The discussion of oligopoly and related economic concepts in the following pages is drawn from works generally accepted as authoritative in the field. See, e.g., Bain, Barriers to New Competition (1956); Bain, Industrial Organization (1959); Chamberlin, The Theory of Monopolistic Competition (7th ed. 1956); Fellner, Competition Among the Few (1949); Machlup, The Economics of Sellers' Competition (1952); Business Concentration and Price Policy (National Bureau of Econ. Research 1955); Monopoly and Competition and Their Regulation (Chamberlin ed. 1954). See also Kaysen & Turner, Antitrust Policy (1959). The Supreme Court in the *Philadelphia National Bank* case, by its repeated citation of economic analyses such as the above works, has clearly indicated the propriety of a reviewing tribunal's consideration of such analyses in reaching its decision in a Section 7 case.

ness policies. No one seller in such a market is so powerful that he can retaliate effectively against a competitor who cuts prices or otherwise attempts to increase his market share; there are too many firms for deliberately interdependent pricing and other policies to be feasible (actual agreement, of course, would violate Section 1 of the Sherman Act); and no one seller's competitive behavior, however vigorous, is apt to endanger seriously the market share of any of his competitors, or even be apparent to them, since even if one seller increases his market share by 50%, the *pro rata* effect on each other seller's share will be only 1/200th. For these reasons, each seller is likely to establish his business policies in disregard of the actions of any individual competitor.

Conditions are very different in a market which has only, say, three sellers, each of equal size. If one cuts prices so as to increase his market share by 50% (i. e., to 50% of the market), each of his rivals will experience a 25% diminution in his respective market share. Unless they can operate profitably with their output thus curtailed, they must meet the price cut of their competitor. If there is active price cutting in such a market, the prices of all sellers will soon be forced down to the point at which they equal or barely exceed marginal cost—and no firm will be making a profit. Rather than incur price warfare that is bound to be mutually disadvantageous, each seller in a market of few sellers (an oligopolistic market) is likely tacitly to renounce price competition, and perhaps other forms of rivalry as well.[20]

What makes such tacit renunciation of price competition feasible in the oligopolistic market, as it is not in the atomistic market, is the fact that the attempt of one seller to increase his market share is bound to have significant

[20] Bok, *supra*, note 18, at 310.

repercussions upon the market shares of his competitors, who are compelled, in consequence, to retaliate immediately with a matching price cut. The price cutter "can't get away with it" for very long, and so he is better off refraining from systematic price cutting. The consequence of each firm's refraining from price competition is likely to be an unnaturally high price level in the market and a general deadening of competition. Price leadership, "conscious parallelism," excess capacity, emphasis on heavy advertising in lieu of technological innovation, and "administered prices," are some of the symptoms of oligopoly.

Of course, not all market structures are so easily classifiable as either atomistic or oligopolistic as those we have described. There is no ascertainable critical point, in terms of the number and size distribution of sellers in the market, at which behavior characteristic of the atomistic market ends and that characteristic of the oligopolistic begins, for everything depends on the psychology of business planners.[21] Analysis of market structure does not tell us at exactly what point a particular firm, by reason of its own and its rivals' market shares, will decide it can no longer afford to ignore the probable reactions of its competitors in setting business policy.

Three further points about market concentration should be made. The first is that a market may be oligopolistic though a number of small firms exist alongside the few dominant firms. See *Philadelphia National Bank*, *supra*, at 367. But the small firms, in such circumstances, will not enjoy the same freedom of action as they would in an atomistic market, for they will not be competing on equal terms with the dominant firms. Where the disparity in market shares as between competitors is very large, the

[21] "Oligopoly is . . . characterized by the state of mind of a seller *vis à vis* other sellers. . . ." Machlup, *op. cit. supra*, note 19, at 351.

competitive disadvantage of the small firms is apparent. For example, if a firm with a market share of 2% doubles its production, a firm with a 33⅓% share of the same market will lose 2% of its sales. This may well be a sufficiently sharp decline to induce the large firm to meet the small firm's competitive foray, and, if the large firm reacts with great vigor, the result may be the destruction of its small rival. For should the large firm, by dint of vigorous competitive conduct, increase its market share from 33⅓% to 40%, the small firm's market share might shrink to nothing. In an oligopoly market, then, given the retaliatory power of companies having a strong market position,[22] small firms tend to exist at the sufferance of their large rivals, and for that reason are likely to opt for peaceful coexistence—not vigorous competition—with those rivals. Small firms in such circumstances characteristically pursue the "quiet life," following the price leadership of the dominant firms in the market and otherwise conforming to the competitive norms established by those firms.

The second point is that oligopoly behavior does not depend upon there being any fixed size ratio among the leading firms. Nor need there be more than a single dominant firm. A market in which one firm enjoys, say, a share of 70%, with the balance divided among a number of other firms, will still exhibit the characteristics of oligopoly. The leader will have the kind of market power that compels his rivals to take his reactions into account in their business planning, and his disproportionate strength will tend to deter his small rivals from vigorous competitive activity.[23]

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[22] See Comment, 68 Yale L. J. 1627, 1639, n. 57 (1959). Cf. Edwards, *Conglomerate Bigness As a Source of Power*, in Business Concentration and Price Policy, *op. cit. supra*, note 19, at 331, 335.

[23] Congress, indeed, appears to have been specifically concerned with the problem of single-firm dominance (short of outright monopoly) in amending Section 7. "The bill is intended to permit [legal] intervention

The third point is that market concentration is a variable of market structure, not of market behavior. Undue concentration itself is not a form of anti-competitive conduct, as, for example, raising prices in the face of declining demand may be; but undue concentration increases the probability that behavior in the market will be non-competitive. In distinguishing market "structure" from "behavior," we do not mean to suggest that our concern is limited to a static, abstract model of market relationships. As will be seen shortly, market structure in a particular industry depends in significant respects upon the techniques of competition, and other dynamic factors, prevailing in that industry.

Although concentration may be the most important market structure variable and the one that was in the forefront of Congressional deliberations on the anti-merger statute, it is not the only such variable and it cannot be adequately understood apart from others. For present purposes, the most significant market structure variable after concentration is the condition of entry into the market by new competitors.[24] No firm will contemplate entry into a new market unless it feels reasonably sure of being able to obtain a satisfactory market share. If the firms in a concentrated market use their market power to maintain a very high price level, the attractiveness of entry is enhanced. For, in such circumstances, the new entrant, by selling somewhat below the prevailing price level in the market, will be able to obtain a foothold in the market yet

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. . . when the effect of an acquisition may be a significant reduction in the vigor of competition. . . . Such an effect may arise in various ways: such as . . . [an] increase in the relative size of the enterprise making the acquisition to such a point that its advantage over its competitors threatens to be decisive." H.R. Rep. No. 1191, 81st Cong., 1st Sess. 8 (1949).

[24] It is not the only other such variable, however. For example, competition may be affected by whether the number of buyers from the firms in the market is small (oligopsony).

still operate well above his break-even point, so long as his costs are not substantially higher than those of the firms presently active in the market. Thus, the possibility of entry—potential competition—may exercise a restraining influence on oligopolists, who will be inclined to maintain a price level low enough to discourage entry, i.e., actual competition. For this reason the existence of barriers to entry into a concentrated market, which enable the established firms to raise prices above a low, entry-discouraging level, is a factor that bears significantly on the existence of oligopoly conditions in the market.[25]

At least three factors may retard entry. The first is the possession of cost advantages by the firms presently occupying the market vis-à-vis prospective entrants.[26] Such advantages may stem from, for example, control of patents, a scarcity of raw materials, or impeded access to channels of distribution (absolute cost advantages), or from scale of operation (advantages or economies of scale). In the case of absolute cost advantages, the prospective entrant can compete with the established firms only at a substantial disadvantage, and the chances that he will be able to obtain a reasonable position in the market are, in consequence, reduced. Even if the prevailing price level in the market is well above his cost level, he will be vulnerable to retaliation by established firms which have a lower cost level and hence a greater flexibility in pricing. As for advantages of scale, the prospective entrant, if he is to compete on equal terms with the established firms, must be prepared to operate on a sufficiently large scale to be able to obtain the same advantages of scale enjoyed by the established

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[25] This is not to say, however, that the absence of substantial barriers will ensure effective competition in the market. See Bain, Barriers to New Competition 189 (1956).

[26] See Bain, Industrial Organization 249-51 (1959); Bain, *Conditions of Entry and the Emergence of Monopoly*, in Monopoly and Competition and Their Regulation 215, 226-36 (Chamberlin ed. 1954).

firms. If the scale of optimum efficiency in the industry is substantial, a heavy initial investment may be required. To justify such an investment, the entrant must be in a position to obtain a large market share within a reasonable period of time. In these circumstances, the entrant is not only being made to play the competitive game for high stakes, but, by being forced to enter on a large scale, he is virtually ensuring a swift competitive response by the established firms. They might tolerate the obtaining of a small foothold by a new entrant, but they can hardly sit by while a large share of the market is absorbed by the newcomer.

Another, and perhaps more important, entry-retarding factor is "product differentiation." [27] The term refers to consumer preferences as between very similar, close-substitute products or brands. Such preferences need not, and frequently do not, rest on real or substantial differences in terms of quality or usefulness. By reason of distinctive packaging, the firm's long history, mass advertising and sales promotions, or other factors, a firm may succeed in establishing such a definite preference for its brand that the consumer will pay a premium to obtain it, although it is functionally identical to competing brands. Such brand allegiance, which the prospective entrant, marketing a new brand, will not, of course, command, may be the cumulative result of the expenditure of many millions of dollars over a period of many years to promote the brand, and

[27] "[T]he most important barrier to entry discovered by detailed study is probably product differentiation." Bain, Barriers to New Competition 216 (1956). Some commentators, see, e.g., Kaysen and Turner, Antitrust Policy 74 (1959), follow Chamberlin in classifying product differentiation as a distinct market structure variable, rather than subsume it under condition of entry. Since, as will appear, condition of entry as we use that term is relevant not only to new entry, but equally to the competitive vigor of the existing firms in the market, it is of no practical significance whether product differentiation be deemed an independent factor or an aspect of condition of entry.

may, in consequence, be very difficult to counteract even if the entrant makes a very substantial initial investment to promote his own brand.[28] As a result, in an industry in which product differentiation is an important factor, not only may the new entrant find it especially difficult to pry customers loose from the established firms, but the higher price obtainable for a brand that has been successfully differentiated in the public mind from competing brands may impart a flexibility in pricing, akin to that imparted by cost advantages, which the newcomer may not be able to achieve for many years.

The third entry-retarding factor is the financial size or strength of the established firms in comparison to that of prospective entrants. Plainly, entry is more effectively deterred by the prospect of an established firm which can well afford to meet a competitive challenge, than by the prospect of a firm small compared to the entrant (though large in its market) or in poor financial condition.

The three entry-retarding factors obviously interact, most notably perhaps in industries in which the dominant firms have succeeded in differentiating their products through mass advertising and sales promotions. As noted earlier (see JA 399a), advertising in the mass media

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[28] See Bain, Industrial Organization 240, 250, 320 (1959); Bok, *supra* note 18, at 239. The Supreme Court has given explicit recognition to the role, in the repulsion of new competition, of heavy expenditures for product differentiation:

> "The record is full of the close relationship between . . . large expenditures for national advertising of cigarettes and resulting volumes of sales. . . . Such advertising is not here criticized as a business expense. Such advertising may benefit indirectly the entire industry, including the competitors of the advertisers. Such tremendous advertising, however, is also a widely published warning that these companies possess and know how to use a powerful offensive and defensive weapon against new competition. New competition dare not enter such a field, unless it be well supported by comparable national advertising." *American Tobacco Co.* v. *United States*, 328 U.S. 781, 797.

may not be optimally efficient except on the part of a firm which operates on a national scale; and, obviously, advertising on a national scale demands considerable financial strength. Moreover, the effectiveness of advertising and sales promotions would appear to increase, at least up to a certain point, in direct proportion to their volume. A seller with an advertising and sales promotion budget twice that of his principal competitor not only may be able to recoup his additional selling costs in the premium price that he is able to charge for his brand; in addition, his more intensive advertising and promotional efforts are very likely to increase his market share at the expense of his rivals, because the more advertising and promoting a firm does, the more intensively is the public exposed to and persuaded to buy the firm's brand. Thus, financial strength and large absolute size may be indispensable attributes in enabling a substantial market share to be acquired and maintained in industries characterized by product differentiation through advertising and promotions.[29] At the same time, given the extent to which effectiveness in the utilization of advertising and other promotional activities seems to be a function of size and strength, the scale necessary for a firm to operate at optimum efficiency in the market may become very large indeed. See Bain, Barriers to New Competition 138 (1956).

It is important to note that the factors making for high entry barriers also make for domination of small competitors by large, and so tend to eliminate actual as well as potential competition. If the large firm enjoys substantial competitive advantages by virtue of product differentiation, cost advantages or financial strength, any attempt by a

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[29] See Bain, Industrial Organization 172-73 (1959); Bain, *Advantages of the Large Firm: Production, Distribution, and Sales Promotion*, 20 J. of Marketing 336, 341 (1956).

small firm to expand its market share at the expense of the large firm is unlikely to succeed.[30] By the same token, should the large firm desire to expand its market share, the small firm, lacking comparable financial reserves, pricing flexibility, or a reservoir of accumulated consumer preference, is apt to be the first to lose ground. The power to repel or discourage new competitors, then, is the power to control or discipline existing competitors, to make them reluctant to engage in conduct, such as price cutting, which might provoke retaliatory action on the part of the dominant firms. In sum, high entry barriers, like excessive concentration, impair effective competition.

Fourth. The concept of competition upon which Section 7 rests has aspects which transcend the narrowly economic. "Other considerations [besides the danger to the economy posed by unchecked corporate acquisitions] cited in support of the bill [to amend Section 7] were the desirability of retaining 'local control' over industry and the protection of small businesses. Throughout the recorded discussion may be found examples of Congress' fear not only of accelerated concentration of economic power on economic grounds, but also of the threat to other values a trend toward concentration was thought to pose." *Brown Shoe Co., supra,* at 315-16.[31] One commentator has suggested that the legislative history of Section 7 invites "reliance upon a structural

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[30] "In many cases . . . the most important benefit [from increased firm size] is the ability to support far larger bugets for advertising and promotion than a small firm could feasibly assume. Thus, by growing larger, the producer of a retail commodity can increase its capacity to establish consumer preferences for its product to an extent that cannot easily be matched by its smaller rivals. In this way, the relative strength of the largest firm is enhanced, since efforts by smaller concerns to expa d their share of the market will tend to be somewhat blunted by the popularity of the more highly advertised product." Bok, *supra* note 18, at 276. See Bain, Industrial Organization 174 (1959).

[31] The legislative history is reviewed by Bok, *supra* note 18, at 234-37, 247.

theory of competition which stresses the advantages of large numbers of small-sized firms." [32]

We cannot shut out the broad policy considerations which figured so prominently in the deliberations leading to Section 7, however difficult they may be to translate into precise legal criteria. To disregard them, moreover, would be to close our minds to a persistent theme in federal trade regulation. "Throughout the history of these statutes [the federal antitrust laws] it has been constantly assumed that one of their purposes was to perpetuate and preserve, for its own sake and in spite of possible cost, an organization of industry in small units which can effectively compete with each other." *United States* v. *Aluminum Co. of America*, 148 F.2d 416, 429 (2d Cir. 1945).[33] On the other hand, there is no warrant in the language or history of Section 7 for subordinating the protection of *competition* to the protection of small-business *competitors*.[34]

If the effect of a merger is to place a number of small firms at a severe competitive disadvantage, and the merger cannot be shown to enhance the general competitive vigor of the market, it may be appropriate, in implementing Section 7, to note Congress' patent concern with the preservation, to the extent compatible with social and economic progress, of the fundamental benefits of a small-business, decentralized economy. The interest in fostering equality of opportunity for small business and in promoting the diffusion of economic power, although it may not be identical to the economists' notion of competition, was unques-

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[32] Bok, *supra* note 18, at 247. Professor Bok, however, criticizes such a test as unworkable. *Id.*, at 248.

[33] See Thorelli, The Federal Antitrust Policy: Origination of an American Tradition 227 (1954); Dirlam & Stelzer, *The DuPont-General Motors Decision: In the Antitrust Grain*, 58 Col. L. Rev. 24, 41 (1958).

[34] See *Philadelphia National Bank*, *supra*, at 367, n. 43; *Brown Shoe Co.*, *supra*, at 320: *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576, 588, 592 (S.D.N.Y. 1958).

tionably intended by Congress to be relevant in any scheme for the enforcement of Section 7.[35]

Fifth. Section 7 embodies a *preventive* antitrust philosophy; Congress wanted the enforcement agencies to be able to arrest the anti-competitive effects of market power in their incipiency. A corollary of Section 7's prophylactic function is that the requirements of proving a violation are less strict than they would be under the Sherman Act. A further corollary is that evidence of market behavior, as opposed to evidence of market structure, is not a necessary ingredient of the prima facie case. If the enforcement of Section 7 against a particular merger were impossible until actual non-competitive practices had been discovered in the market affected by the merger, all opportunity to attack those practices at their root would be lost. Economists teach, and Congress, in enacting the amended Section 7, postulated, that market behavior follows market structure; hence, proof that a merger has created or aggravated a market structure conducive (in a practical, not theoretical or abstract, sense) to practices that substantially lessen competition, or tend to monopoly, is sufficient under the statute. Cf. *Brown Shoe Co., supra*, at 322.

The preventive philosophy reflected in Section 7 has significance not only in fixing the requirements of a prima facie case in a Section 7 proceeding, but in defining the standards of relevancy and materiality governing such a proceeding. The Supreme Court has been quite explicit as to the latter:

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[35] Compare Adelman, *supra* note 12, at 236; Dewey, *Mergers and Cartels; Some Reservations About Policy*, 51 Am. Econ. Rev. 255, 261-62 (Papers and Proceedings, 1961). "[W]e cannot fail to recognize Congress' desire to promote competition through the protection of viable, small, locally owned businesses. Congress appreciated that occasional higher costs and prices might result from the maintenance of fragmented industries and markets. It resolved these competing considerations in favor of decentralization." *Brown Shoe Co., supra*, at 344.

". . . [T]he ultimate question under § 7 [is] whether the effect of the merger 'may be substantially to lessen competition' in the relevant market. Clearly, this is not the kind of question which is susceptible of a ready and precise answer in most cases. It requires not merely an appraisal of the immediate impact of the merger upon competition, but a prediction of its impact upon competitive conditions in the future; this is what is meant when it is said that the amended § 7 was intended to arrest anticompetitive tendencies in their 'incipiency.' Such a prediction is sound only if it is based upon a firm understanding of the structure of the relevant market; yet the relevant economic data are both complex and elusive. And unless businessmen can assess the legal consequences of a merger with some confidence, sound business planning is retarded. So also, we must be alert to the danger of subverting congressional intent by permitting a too-broad economic investigation. And so in any case in which it is possible, without doing violence to the congressional objective embodied in § 7, to simplify the test of illegality, the courts ought to do so in the interest of sound and practical judicial administration." *Philadelphia National Bank, supra*, at 362 (citations omitted). See *Brown Shoe Co., supra*, at 341 & n. 68; *Standard Oil Co.* v. *United States*, 337 U.S. 293, 313.

The Court's emphasis appears to be twofold. On the one hand, a statute aimed at arresting practices in their incipiency can deal only with broad probabilities. The very nature of such a statute makes a quest for certainty delusive.[36] This is especially true in an area in which lawyers, not trained in economic analysis, must nonetheless grapple with what must often appear to be an unintelligible mass

[36] "A preventive antitrust policy . . . should be directed at activities which on their face have a general and important tendency to reduce competition. . . ." Stigler, *Mergers and Preventive Antitrust Policy*, 104 U. Pa. L. Rev. 176, 177 (1955). Cf. *Brown Shoe Co., supra*, at 323 (Congress' "concern was with probabilities, not certainties").

of complex economic materials. Not surprisingly, the less sophisticated in economic matters a lawyer is, the more "thorough" a job of economic inquiry he is likely to believe necessary.[37] The emergence of a class of business practices as to which, under the Sherman Act, a substantial anti-competitive effect is conclusively presumed (so-called *per se* offenses) testifies to the exigent need of simplifying the economic issues in antitrust litigation. Even where a *per se* rule is inappropriate, some limitation of the scope of economic inquiry will almost always be necessary and proper, for "the demand for full investigation of the consequences of a market situation or a course of business conduct is a demand for nonenforcement of the antitrust laws." Mason, *Market Power and Business Conduct: Some Comments*, 46 Am. Econ. Rev. 471, 478 (Papers and Proceedings, 1956). In a Section 7 proceeding, an inquiry bent on obtaining and digesting all data arguably relevant in making "some ultimate reckoning of social or economic debits and credits" of the merger (*Philadelphia National Bank, supra*, at 371), but not genuinely probative in making "an appraisal of the immediate impact of the merger upon competition . . . [and] a prediction of its impact upon competitive conditions in the future" (*id.*, at 362), is inevitably self-defeating, as the Commission's experience in this class of cases has amply demonstrated.

Furthermore, the danger is acute that if proceedings under Section 7 are allowed to become top-heavy with masses of economic and business data which are not strictly probative, the statute will become useless as an enforcement tool. In a merger proceeding, relief short of divestiture is rarely adequate. But divestiture is not a practical

[37] "[E]rrors in logic and inference will increase when large amounts of complex data must be considered in a conceptual framework that is but partially understood." Bok, *supra* note 18, at 295.

remedy unless it is accomplished within a reasonable time after the consummation of the merger. If too much time elapses, the property, good will, management, customers, business opportunities, and other assets and attributes of the acquired and acquiring firms tend to become irremediably commingled, and the acquired firm may lose all vestiges of independence. It may be impossible to reconstitute the acquired firm as a going concern; the patient, as it were, will be too far gone for medicine, or even radical surgery, to do him any good.

Other interests press for the simplifying and expediting of Section 7 proceedings. One is the interest in business stability and progressiveness. While an action under Section 7 is pending, the business decisions of the merged firm may be characterized by hesitancy and indecisiveness, due to uncertainty about the future of the firm. So also, perfectly lawful mergers may be deterred by the prospect of protracted legal proceedings whose outcome cannot reasonably be predicted. Finally, the effectiveness of Section 7 to check, where necessary in the interest of protecting competition, the very large annual wave of mergers[38] will be impaired if the limited staff and budget of this Commission (and of the Antitrust Division of the Department of Justice) that can be devoted to the enforcement of Section 7 are allowed to be frittered away in unduly complex and protracted proceedings.

That effective relief in a Section 7 proceeding becomes increasingly difficult, to the point of impossibility, over time, coupled with the other considerations we have men-

[38] In 1959-61, an average of 650 firms disappeared annually through mergers—more than at any time since 1926-30, the crest of the last great merger movement. These figures are rough estimates, are confined to manufacturing and mining firms, and probably underestimate the actual number of mergers even among those firms. See Mergers and Superconcentration: Acquisitions of 500 Largest Industrial and 50 Largest Merchandising Firms, *op. cit. supra* note 13, at 266. This Commission counted, for example, 1260 industrial mergers in 1962. F.T.C. News Release, Feb. 8, 1963.

tioned, argues in favor of sharply narrowing, wherever possible, the scope of permissible legal inquiry. Clear and relatively simple rules, and the rigorous exclusion of evidence which bears only remotely upon the central concerns of the statute, are essential if Section 7 is not to become a judicial and administrative nullity.

Specifically, we think that the admission of post-acquisition data is proper only in the unusual case in which the structure of the market has changed radically since the merger—for example, where the market share of the merged firm has dwindled to insignificance—or in the perhaps still more unusual case in which the adverse effects of the merger on competition have already become manifest in the behavior of the firms in the market. See *Reynolds Metals Co.* v. *F.T.C.*, 309 F.2d 223 (D.C. Cir. 1962). If post-acquisition data are to be allowed any broader role in Section 7 proceedings, a respondent, so long as the merger is the subject of an investigation or proceeding, may deliberately refrain from anti-competitive conduct—may sheathe, as it were, the market power conferred by the merger—and build, instead, a record of good behavior to be used in rebuttal in the proceeding. One consequence of a receptive attitude toward post-acquisition evidence on the part of the tribunals deciding Section 7 cases is that there will be frequent remands for further such evidence, as the instant case illustrates, until eventually the proceeding may become so protracted as to preclude effective relief, or may terminate in the respondent's favor only because his good-conduct evidence has been considered persuasive. At that point, the respondent is free to take the wraps off the market power conferred by the merger.

More important, given the nature of the concerns that moved Congress to amend Section 7, post-acquisition evidence will rarely have substantial probative value even if

the respondent's post-acquisition conduct is not influenced by the threat of legal action. Congress postulated that certain kinds of market structure would ordinarily lead to non-competitive company behavior. If a market structure conducive to non-competitive practices or adverse competitive effects is shown to have been created or aggravated by a merger, it is surely immaterial that specific behavioral manifestations have not yet appeared. In many cases, the converse will also hold true. The fact that non-competitive practices have persisted or even increased in the market since the merger may reveal little about the merger's effects. The behavior of firms is a complex matter; it may be impossible to separate out the various causal factors so precisely as to be able to attribute non-competitive behavior to a particular merger. The same strictures apply to evidence of changes in market *structure* that have occurred since a merger. The full significance of such changes may not become apparent until long after they occur, and their relationship to a particular merger is likely to be obscure.

At all events, the ineffectuality of a wait-and-see policy on the part of the agencies charged with the enforcement of Section 7 should be obvious. If the agencies postpone the commencement or completion of an action challenging a merger in order to see what trends or results will stem from it, they thereby disable themselves from obtaining or granting effective relief. It bears repeating that an order divesting corporate assets that were acquired a long time before the issuance of the order rarely advances the policies of Section 7.

C. THE EFFECTS OF THE INSTANT MERGER ON COMPETITION

With the foregoing general principles in mind, we now address ourselves to the ultimate question in this, as in

every Section 7, case: whether the effect of the particular merger "may be substantially to lessen competition, or to tend to create a monopoly," "in any line of commerce in any section of the country."

The relevant line of commerce (product market) in this case is alleged to be household liquid bleach (5¼% sodium hypochlorite solution). No contention is made that industrial bleach should be included, and the contention, urged below by respondent, that dry or powdered bleach is sufficiently interchangeable with liquid bleach to be part of the same line of commerce, has not been pursued on appeal. It is clear, at all events, that the examiner's exclusion of powdered bleach from the relevant line of commerce was correct. The evidence shows that liquid and dry bleaches are used for different purposes: dry bleaches are in the light-duty category; liquid bleaches are in the heavy-duty category. Dry bleaches are approximately twice as expensive to use as liquid bleaches and their primary utility is in bleaching fine fabrics that do not respond well to stronger bleaches. To the consumer, liquid and dry bleach are economically and functionally distinct products that are poor substitutes for each other. See *Reynolds Metals Co.* v. *F.T.C.*, 309 F.2d 223, 226-27 (D.C. Cir. 1962); *Crown Zellerbach Corp.* v. *F.T.C.*, 296 F.2d 800, 811 (9th Cir. 1961). In any event, at the time of the merger dry bleach accounted for only about 10% of total household bleach sales, so that even if it were included as part of the relevant product market, the market shares of Clorox and its competitors would not be changed substantially.

The relevant geographical market in a Section 7 case ("section of the country") is, in the words of the Supreme Court, "where . . . the effect of the merger on competition will be direct and immediate." *Philadelphia National Bank, supra,* at 357. The complaint charges that the

effects of the merger on competition will be felt in the national market for household liquid bleach and in a number of regional submarkets as well. Since high shipping costs impose definite territorial limitations upon the distribution of household liquid bleach, and since Clorox is the sole producer for the national market, the appropriateness of appraising the merger in terms of its alleged impact upon the national market is somewhat questionable. The effects of Procter's acquisition of Clorox will be felt differently in the different regions of the country, according to the market position occupied by Clorox vis-à-vis its competitors in each region. Cf. *American Crystal Sugar Co.* v. *Cuban-American Sugar Co.*, 152 F. Supp. 387, 398 (S.D. N.Y. 1957), aff'd, 259 F.2d 524 (2d Cir. 1958). No uniform national impact can be forecast.

Despite the fact that the proper sections of the country in this proceeding are a series of distinct regional markets, no attempt has been made to demarcate these markets, and it is probably not a feasible undertaking.[39] In such circumstances, it is appropriate to use aggregate national figures as approximations of conditions obtaining in the several regional markets. Cf. *Brown Shoe Co., supra*, at 342-43. If anything, the use of such figures favors respondent. Even if the regional sales figures in the Nielsen Index cannot be accepted as accurate market share percentages, they strongly suggest that in many of the geographical markets for liquid bleach Clorox's market share must be

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[39] The regional breakdowns given in the A. C. Nielsen Food Index (see p. 7 above) represent standardized zones which Nielsen uses for all grocery products, and are not drawn so as to reflect meaningful geographical markets for the household liquid bleach industry. In rejecting these zones as geographical markets for present purposes, we do not mean to suggest that extremely rigorous standards of proof in this area are appropriate or allowable. The Supreme Court has cautioned that certainty in the calculation of the relevant market cannot, and need not, be achieved. *Philadelphia National Bank, supra*, at 361.

considerably higher than its national average, in places approaching monopoly proportions.

Having established the relevant market, we are prepared to analyze its structure, disregarding, for the moment, the impact of the merger upon it. Manifestly, the household liquid bleach industry is highly concentrated and oligopolistic. A small number of firms (6) account for an overwhelming proportion of the industry's sales (80%), and what is left is divided among firms which, absolutely and relatively, are very small. The concentration ratio, in other words, is that characteristic of oligopoly.[40] Among the market leaders, a single firm, Clorox, is dominant.[41] It enjoys almost 50% of the total sales of the industry. Moreover, as the only national seller in an industry strongly characterized by product differentiation through advertising, Clorox enjoys a decisive competitive advantage, and has succeeded in creating a definite consumer preference for the Clorox brand, enabling it consistently to be priced at or above the level of any competing brand. In point of either market share or financial strength, no firm except Purex can be regarded as a significant competitive factor in the industry, and Purex does not compete with Clorox at all in about one-half of the nation. Indeed, in several areas of the country, Clorox faces no competition whatever from the principal firms, such as they are, of the industry (see JA 397a).

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[40] Professor Bain would probably categorize the household liquid bleach industry as "highly concentrated." See Industrial Organization 127 (1959). Professors Kaysen and Turner would categorize it as a "Type One structural oligopoly," wherein "the first eight firms have at least 50 percent of total market sales and the first twenty firms have at least 75 percent of total market sales." Antitrust Policy 27 (1959). In the *Philadelphia National Bank* case, after the merger the leading firm in the relevant market had a 30-35% share, and the top 4 firms combined, roughly 78%.

[41] "[W]hen one firm has forty or fifty per cent or more [of the market] . . . competition will seldom plague the industry." Stigler, *supra* note 36, at 181.

The factors which make for dominance by Clorox of its rivals also make for formidable barriers to new entry. To be fully efficient, a new entrant into the bleach industry would have to advertise and operate from the outset on at least a broad regional scale,[42] and consequently incur a very heavy initial investment for advertising. To undertake to operate on such a large scale profitably, a prospective entrant must, as we noted earlier, be able to obtain a substantial market share within a reasonable period of time. But if a firm did succeed in acquiring a significant share of one of the regional liquid bleach markets, it would almost certainly provoke a competitive response from Clorox, which could not afford to remain passive in the face of a significant encroachment upon its market position. In the resulting competitive struggle, Clorox, by reason of the substantial, accumulated consumer preference for the Clorox brand, would have a great advantage.

There is evidence in this case that before a new brand of liquid bleach can be safely launched, it must be test-marketed locally. Since Clorox is active in every part of the country, it is in a position, by responding promptly to every such test, to prevent a prospective entrant from acquiring the market data it needs in order even to begin to compete. Indeed, this is what Purex claims Clorox did in Erie, Pennsylvania—responded so promptly and vigorously to Purex's competitive sortie that Purex was unable to complete the test-marketing of its new container (see JA 400a). This incident illustrates, moreover, the two-edged quality of Clorox's dominant position. Not only is it a significant impediment to new entry; it is also an effective barrier to the growth or expansion of Clorox's exist-

[42] Cf. Bain, *Advantages of the Large Firm: Production, Distribution, and Sales Promotion*, *supra* note 29, at 344.

ing rivals in the bleach industry, and thus an inhibitor of vigorous competitive activity.

Clorox's dominant position in the liquid bleach industry is dramatically shown by the fact that Procter, the nation's largest advertiser and perhaps leading manufacturer of household products comparable to liquid bleach, preferred to pay a very large premium for the good will of Clorox (the $17,700,000 difference between the purchase price of Clorox, $30,300,000, and the valuation of Clorox's assets, $12,600,000, suggests the size of this premium), rather than enter the industry on its own. Few firms—certainly none of the firms now active in the liquid bleach industry, with the possible exception of Purex—are in a position to make the investment evidently required to become a fully effective competitor in the liquid bleach industry. Perhaps entry or slight market expansion on the part of very small, neighborhood bleach producers is possible notwithstanding Clorox's dominant position. But the conclusion seems inescapable that at the time of the merger, the industry was concentrated, and barricaded to new entry, to a degree inconsistent with effectively competitive conditions.

What are the consequences for competition if, in an industry such as we have described, a firm such as Procter is substituted for the industry's dominant firm? We find that there are significant areas in which absorption by Procter is likely to affect Clorox's competitive position.

In the first place, the record shows that in the liquid bleach industry the merger of a relatively small, single-product firm with a very large, multi-product firm enables substantial cost savings and other advantages in advertising and sales promotion, especially in television advertising.

The maximum annual volume discounts available to the largest advertisers amount to 25-30% for network television advertising and somewhat smaller but still substantial percentages for magazine, newspaper, and radio advertising. In addition, the discount rates available for local "spot" television advertising favor the large advertiser. In 1957, Clorox spent $1,150,000 on television advertising of all kinds on all stations. While complete discount rates are not included in the record, it is virtually certain that an expenditure of this size spread over all networks and stations did not entitle Clorox to discounts of any substance. For example, a $3,000,000 expenditure on NBC or CBS night time is required for the maximum discount. The record shows that Purex, in time bought in behalf of its complete line of products, received a 6% discount on an expenditure of $1,400,000 on one network, and a 15% discount on an expenditure of $2,400,000 on another. This was possible because Purex, unlike Clorox, is a multi-product firm, and because an advertiser can combine all of his advertising for all of his products to obtain the volume discount, which is then applied to the advertising for each brand. It is conceded that Procter is entitled to, and receives, the maximum volume discounts available in television advertising and, no doubt, in other media as well. With Clorox now a part of the Procter line, for the same amount of money Clorox spent on network television advertising prior to the merger, at least 33⅓% more network television advertising can now be obtained.

Analogous benefits are obtainable in the other advertising media. The record discloses that maximum volume discounts of between 12% and 17% are available to advertisers in the leading women's or family magazines. An annual expenditure of $1,000,000 or more may be necessary to earn the maximum in a particular magazine. Prior

to the acquisition, Clorox received no discounts for magazine advertising. Purex, the record shows, received a small discount in one magazine.

The scale advantages of a large, multi-product firm in advertising are not limited to volume discounts. According to uncontradicted evidence of record, a commercial announcement during a television program is substantially more effective in promoting a product than one during the between-program station break. Not only is the viewer apt to be less attentive during the station break—he may be switching stations, or he may leave the room momentarily—but a brand becomes better known to the consumer by being associated with a program which the consumer watches. Unless Clorox had been willing to put a disproportionate share of its advertising budget into a single venture, it could not, prior to the acquisition, have afforded to buy an entire network television program. Cf. *United States* v. *Lever Bros. Co.*, 216 F. Supp. 887, 899 (S.D.N.Y. 1963). Procter, however, can and does buy the sponsorship of such programs in behalf of several of its products, and this means that if Procter includes Clorox among the products advertised on such a program, Clorox can realize the advantages of network program advertising at a fraction of the cost that would have been required prior to the merger. Moreover, even if Clorox could have purchased sponsorship of a program prior to the merger, the same investment, if used now to buy one-third of three shows sponsored by Procter, will result in broadened consumer exposure to the Clorox brand, thereby increasing the effectiveness of the investment.

Another advantage in network program advertising that can be derived from the association of Clorox with Procter arises from the ability of a multi-product national advertiser to run commercials for different products in different

sections of the country during a single commercial break. If Procter decides that Clorox needs advertising support in some area where Clorox faces particularly intense competition, it can place a Clorox commercial in that area, and that area only, while the remainder of the country is watching a commercial for one or more of Procter's other products. Clorox thereby gains the advantage of association with network television while actually limiting its advertising expenditures to selected regional markets.

Similar advantages are obtainable by joint promotions, and by joint advertising in the other media. Procter can incorporate promotions for Clorox on the same in-store display cards as are used for other Procter products and thus receive point-of-sale promotion for several products at the cost of printing, distributing and installing one set of cards. Similarly, premium and special-offer coupons for Clorox can be mailed in the same envelope as those for other Procter products. In this way Clorox reaps the advantage of this type of promotion without having to pay full processing and mailing costs or make the initial investment necessary to launch this promotional method. The record shows that Procter has frequently engaged in combined-product displays and promotions of this sort.

Joint newspaper or magazine advertising of Procter products, including Clorox, also offers the possibility of considerable cost advantages.

A related point is that while prior to the merger Clorox distributed bleach to retailers by means of a network of independent brokers, Procter has a direct sales force for its products, and, were Procter to distribute Clorox bleach through this sales force, distinct promotional advantages would probably result. Independent brokers handle the products of many manufacturers and frequently carry competing brands; they have no particular interest in push-

ing one brand rather than another. Procter's sales force deals only in Procter products and spends considerable effort assuring these products adequate and prominent shelf space and special displays. In light of the critical role played by shelf space in liquid-bleach competition, use of a direct sales force—a device that may be fully efficient only for a multi-product firm—would in all likelihood substantially increase Clorox's already great market power.

The acquisition also has consequences for the bargaining position of Clorox in its dealings with retailers of liquid bleach. That Procter is the leading producer of a number of products marketed through grocery stores may enable it to induce retailers to give favored treatment to Clorox in the crucial fight for shelf space or otherwise concede especially advantageous terms involving the retail selling of Clorox bleach. We need not go so far as to find that leverage of the kind that supports tie-in and full-line forcing arrangements may be Procter's to wield in behalf of Clorox. Given Procter's position as a well-established producer of a broad range of common grocery items—many of them "must" items (see JA 456a)—it would seem likely that Procter can obtain from retailers, as a matter not of coercion but of convenience or expediency, certain advantages in the display or marketing of its products which are not available to a single-product producer, such as the pre-merger Clorox. Cf. Machlup, The Political Economy of Monopoly 111-12 (1952).

Another material consequence of the merger is the advent, in the liquid-bleach industry, of a firm with a breadth of experience and degree of financial strength beyond anything possessed by the existing members of the industry. We have already indicated the importance of absolute size in effective advertising; Procter's size, whether measured by sales or assets, is many times greater than that of

the largest firm operating in the industry prior to the merger. Furthermore, there is testimony in the record that sales promotions are considered in the main too expensive for a single-product firm in the relatively small-scale bleach industry; thus, at the time of the merger, Clorox was engaged in virtually no sales-promotion activities. Procter, a firm that in 1957 incurred sales-promotion expenses in an amount greater than Clorox's total sales, is in an obvious position to utilize the sales-promotion technique on a wide scale in behalf of Clorox.

Financial ability, moreover, may play a substantial competitive role in an industry such as liquid bleach quite apart from advertising and sales promotions. The record shows that one way in which a producer may obtain increased shelf space is by offering the merchant a special price, thus enabling the merchant to obtain a higher resale profit margin. To be able to do this frequently and effectively requires the kind of pricing flexibility available only to a firm with ample reserves. So also, it is a fact that consumer preferences for particular liquid bleach brands, even for Clorox, are not invulnerable to competitive inroads; the Erie, Pennsylvania, incident (see JA 400a) demonstrates the prevalence of local price cutting. Even local price cutting, however, cannot long be maintained by a firm short on reserves. In a price fight to the finish, Procter, whose aggregate scale of operations and fiscal resources dwarf the entire liquid bleach industry, can hardly be bested.

Consideration must also be given to the danger that a multi-product firm such as Procter, operating in a market otherwise consisting of single-product firms, may engage in systematic underpricing having most unfair and destructive effects even though the firm is wholly innocent of any predatory intent. "[T]otal profit may be maximized

[in a multi-product firm] . . . by selling some lines below accounting costs." [43]

> "A concern that produces many products and operates across many markets need not regard a particular market as a separate unit for determining business policy and need not attempt to maximize its profits in the sale of each of its products, as has been presupposed in our traditional scheme. It may classify its products into such categories as money-making items, convenience goods, and loss leaders, and may follow different policies in selling the different classes." Edwards, *Conglomerate Bigness As a Source of Power*, in Business Concentration and Price Policy 331, 332 (National Bureau of Econ. Research ed. 1955).

Thus, the greater flexibility in pricing enjoyed by the multi-product firm may lead, without predatory motive or purpose, to below cost selling of a particular product which is in competition with a small firm's single product.

In addition to the concrete competitive advantages in liquid bleach competition which stem from Procter's substitution for Clorox in the liquid bleach industry, some account must be taken of certain intangibles of reputation which Procter unquestionably possesses. Whether or not Procter is in fact a well-managed and aggressive competitor, a question on which the record in this case permits no expression of opinion, the record does disclose that Procter is so regarded by the firms in the liquid bleach industry. To them, Procter is a more feared competitor than was the pre-merger Clorox. Since, as was noted earlier, market

[43] Thorp & Crowder, The Structure of Industry 667 (T.N.E.C. Monograph No. 27, 1941). "[D]iversification may so cloud a concern's cost structure as to result in the shelter of inefficiently made products; a given product may be subsidized without the knowledge of its producer." Hale, *supra*, note 8, at 361.

behavior is determined by the state of mind of the firms in the market, Procter's history of success, its general size and its prowess, which loom large in the eyes of the small liquid bleach firms, must for that reason alone be reckoned significant competitive factors.

Enough has been said to establish that the merger of Procter and Clorox adversely affects the market structure of the liquid bleach industry. While the merger has no immediate impact on the number or size distribution of firms in the market, it does have an immediate impact upon another important variable of market structure—the condition of new entry. Procter, by increasing the Clorox advertising budget, by engaging in sales promotions far beyond the capacity of Clorox's rivals, and by obtaining for Clorox the advertising savings to which Procter, as a large national advertiser, is entitled, is in a position to entrench still further the already settled consumer preference for the Clorox brand, and thereby make new entry even more forbidding than it was prior to the merger. In addition, because a multi-product firm of large size enjoys, as has been seen, very substantial competitive advantages in an industry strongly marked by product differentiation through mass advertising, sales promotions, shelf display and related merchandising methods, the prospects become increasingly remote, given the substitution of Procter for Clorox in the liquid bleach industry, that small or medium-sized firms will be minded to enter the industry. The scale of optimally efficient operation in the industry has been so increased, by reason of Procter's advent, that only very large firms—firms on the scale of Procter itself—can reasonably be expected to be able to compete on roughly equal terms in the industry.

In short, the barriers to entry, already very high, have been markedly heightened by the merger—to the point at

which few firms indeed would have the temerity or resources to attempt to surmount them. And, as has been observed, a heightening of entry barriers concomitantly enhances the power of market leaders to dominate their small rivals, and so smother effective competition. Given Procter's materially greater strength, compared to Clorox, as a liquid bleach competitor, vigorous competition by the small firms in the industry would appear still more effectively and substantially inhibited than prior to the merger.

Our finding that, as a result of this merger, the market structure of the liquid bleach industry is significantly less conducive to competition than was the case prior to the merger, is not in any way dependent upon the actual course of Procter's post-merger conduct. We need not attempt to ascertain or predict whether, and to what extent, Procter has taken or will take active steps to obtain for Clorox the potential scale or other advantages accruing from the merger. As has been pointed out, the conditions which retard competition in an industry are to an important degree psychological. They stem from competitors' appraisal of each other's intentions, rather than from the intentions—or the actions taken upon them—themselves. The appropriate standpoint for appraising the impact of this merger is, then, that of Clorox's rivals and of the firms which might contemplate entering the liquid bleach industry. To such firms, it is probably a matter of relative indifference, in setting business policy, how actively a Procter-owned Clorox pursues its opportunities for aggressive, market-dominating conduct. The firm confined by the high costs of shipping liquid bleach, and the high costs of national or regional advertising, within a geographically small area, cannot ignore the ability of a firm of Procter's size and experience to drive it out of business (not necessarily deliberately) by a sustained local campaign of adver-

tising, sales promotions and other efforts. See Blair, *The Conglomerate Merger in Economics and Law*, 46 Geo. L.J. 672, 688-89 (1958). A small or medium-sized firm contemplating entry cannot ignore the fact that Procter is a billion-dollar corporation whose marketing experience extends far beyond the limited horizons of the liquid bleach industry and whose aggregate operations are several times greater than those of all the firms in the industry combined. Even a large firm contemplating entry into such an industry must find itself loath to challenge a brand as well-established as Clorox bleach, when that brand is backed by the powerful marketing capacities of a firm such as Procter.

If we consider, in other words, not what Procter will in fact do to exploit the power conferred on it by the merger, or has done, but what it can and is reasonably likely to do in the event of a challenge to its dominant market position in the liquid bleach industry, we are constrained to conclude that the merger has increased the power of Clorox, by dominating its competitors and discouraging new entry, to foreclose effective competition in the industry.

D. The Substantiality of the Instant Merger's Anti-Competitive Effects

In finding that the merger of Procter and Clorox has an undesirable effect, from the standpoint of maintaining competition, on the market structure of the liquid bleach industry, we have not determined the legality *vel non* of the merger under Section 7. The statutory test, whether the effect of the merger may be *substantially* to lessen competition, or tend to create a monopoly, has yet to be applied to the facts as found.

The language of Section 7 refutes any notion that every merger whose probable effect on competition is adverse is, for that reason, unlawful. Congress plainly meant to exclude from the proscription of Section 7 mergers having a negligible, abstract, or merely theoretical impact upon the structure of the relevant market. The impact must be significant and real, and discernible not merely to theorists or scholars but to practical, hard-headed businessmen; in a word, it must be "substantial." But substantiality, in the sense used in Section 7, is not a precisely ascertainable quantity; if the statute is to have meaningful application, the courts and the Commission must be content with approximations and estimates. In the *Philadelphia National Bank* case, the Supreme Court, confronted with a conventional horizontal merger, held that where such a merger conferred a 30% market share on the acquiring firm and significantly enhanced the combined market shares of the leading firms in the market (by more than 33%), the merger was unlawful, absent mitigating circumstances. The percentages selected by the Court as manifesting undue concentration were admittedly only rough indicators that the merger would have the effect on competition specified in Section 7; but, in the absence of any more precise indicators, they were deemed to satisfy the statute's requirements.

The merger at bar, because it is not a conventional horizontal or vertical merger, does not afford the tribunal which must decide its legality the ready crutch of percentages. The market structure variable—condition of entry—here involved, unlike concentration (or foreclosure, in the case of a conventional vertical merger), is not even roughly translatable into a percentage. We cannot say that barriers to new entry into the liquid bleach industry have been raised, as a result of this merger, by 10%, 50% or any

other exact figure. Nor do the raw figures on, say, cost savings in advertising enabled by the merger permit any dependable quantitative appraisal of the impact of the merger on existing barriers to entry. But the difference here between substantial and insubstantial, like that between night and day or childhood and maturity, is no less real because the dividing line cannot be precisely drawn.

If mergers not falling within certain familiar categories, such as "horizontal" and "vertical," are to be effectively subject to Section 7, as Congress plainly intended them to be, other means—non-percentile and non-quantitative—of roughly, but fairly, estimating the substantiality of a merger's probable adverse effect on competition in the relevant market, must be found. There is, of course, only one place to look for such tools—the area of the basic policy considerations which moved Congress to enact Section 7 in its amended form and which must therefore govern the enforcement of the statute. We find that there are five factors in this case which, taken together (we need not, and do not, consider whether one or more of these factors, taken separately, would be dispositive of the case), persuade us that the instant merger violates Section 7. This set of factors plays the same role in the decision of this case as percentage ratios play in the decision of other merger cases, that of enabling the deciding tribunal to infer with reasonable assurance that the merger has the specified statutory effect, namely, of probably lessening competition substantially, or tending to create a monopoly, in the relevant market. These factors are: (1) the relative disparity in size and strength as between Procter and the largest firms of the bleach industry; (2) the excessive concentration in the industry at the time of the merger, and Clorox's dominant position in the industry; (3) the elimi-

nation, brought about by the merger, of Procter as a potential competitor of Clorox; (4) the position of Procter in other markets; and (5) the nature of the "economies" enabled by the merger.

First. An important consideration is the very great discrepancy in size between Procter and, not only Clorox, but any firm in the liquid bleach industry. In 1957, Procter's sales of packaged detergents alone were 10 times the total sales of Clorox and 8 times the total sales of all of Purex's products combined. Procter's total sales were more than 20 times the total sales of Purex and more than 25 times the total sales of Clorox. In fact, Procter's advertising and sales promotion budget in 1957 was substantially larger than the combined total sales of Purex and Clorox, and very many times the size of Clorox's advertising budget. Such comparisons could be multiplied; they show plainly that Procter is of a different order of magnitude from that of the principal firms in the liquid bleach industry. Indeed, as has been observed, Procter's financial resources and scale of operations overshadow the entire liquid bleach industry.

A size disparity of this magnitude is significant in several ways. First, it is a reliable indicator that the cost advantages enabled by the merger will be substantial and will substantially affect competitive conditions in the market. It would not be practicable to attempt a full-scale cost study of the firms involved in a merger, with a view toward predicting the actual, quantitative impact of the merger on competition. See Bok, *supra* note 18, at 285-86. We must make do, as has been pointed out, with less exacting but nonetheless useful working criteria; and in the circumstances involved in this case, the scale relationship between the acquiring firm and the principal firms in the

relevant market is such a criterion. A merger between Clorox and, say, Purex might not enable substantial cost advantages, since Purex is not very much larger than Clorox; and the acquisition by Procter of, say, a small automobile manufacturer, even if the acquisition enabled substantial cost savings, would not be likely to impart a decisive competitive advantage to the acquired firm, given the scale of its competitors. But we have in this case a situation in which the pooling of expenditures by the merging firms places the acquired firm in a size class many times greater than that in which its own expenditures placed it and many times greater than that of *any* of its competitors. The inference is warranted, therefore, that the effect of this merger is to enable substantial cost savings which impart a substantial competitive advantage to the acquired firm.

To be sure, we might hesitate to draw such an inference in the case of a merger between firms in unrelated industries, or where the obtaining of cost advantages as a result of the merger depended on complex technological factors. But it has been found that Procter and Clorox are functionally closely related firms, the integration of whose marketing activities is not at all a remote hypothesis. And we have found also that the most substantial cost savings obtainable as a result of the merger, savings in the cost of advertising, depend principally on nothing more arcane than the total amount of the pooled expenditures for advertising on a particular network or in a particular magazine.

Second, the size disparity of the acquiring firm vis-à-vis the firms in the relevant market has an obvious materiality where, as here, that market is strongly marked by product differentiation through mass advertising. The effectiveness of advertising, we have seen, is a function in part of

sheer weight, of the sheer volume of a firm's expenditures for advertising. It is therefore intensely relevant not only that Procter must in absolute terms be deemed a large and affluent corporation well able to finance large advertising campaigns, but, more important, that the firms in the liquid bleach industry are decidedly small and weak *relative* to Procter.

Third, size disparity of the unusual degree involved in this case takes on special significance in light of Congress' expressed concern, in amending Section 7, with the preservation, to the extent practicable and consistent with economic and social progress, of competitive opportunities for small business.

Prior to the advent of Procter, household liquid bleach was basically a small-firm industry. The industry's total sales were less than $100,000,000 annually (i.e., less than 10% of Procter's total sales); many very small firms, perhaps as many as 200, were active in the industry; and the low costs of manufacturing enabled a firm to produce liquid bleach with a relatively small capital investment. Clorox, to be sure, overshadowed the other firms in the industry, but with assets of only $12,600,000, Clorox itself could hardly be regarded as more than a small medium-sized firm. The distinctive nature of the industry threatens now to be utterly transformed by the substitution, for Clorox, of a billion-dollar corporation. Not only does Procter's great size and wide experience permit advertising and sales promotions on a scale hitherto unknown in the liquid bleach industry, but the remaining firms may now be motivated to seek affiliation by merger with giant companies. The practical tendency of the instant merger, then, is to transform the liquid bleach industry into an arena of big business competition only, with the few small firms

that have not disappeared through merger eventually falling by the wayside, unable to compete with their giant rivals.

To be sure, there may be firms in this industry that are so small—firms with a purely neighborhood business which engage only in local advertising—as to be relatively unaffected by the substitution of Procter for Clorox, although such firms might very likely be the first casualties in any attempt by Procter to increase Clorox's market position through enhanced advertising or other marketing activities. Nevertheless, in the range between these very small firms, at the lower end, and Clorox, at the upper end, are to be found a number of relatively small firms whose continued existence as independent entities is gravely threatened by this merger.

Precisely this phenomenon, the transformation through mergers of a small-business into a big-business industry, was at the heart of Congress' concern with what it conceived to be an accelerating trend toward excessive concentration of economic power. In the deliberations leading to the amendment of Section 7, illustration after illustration was cited of industries, formerly characterized by the vigorous competition of small firms on a footing of approximate equality, transmuted by mergers into arenas of "monopolistic competition." [44] This manifest Congressional policy has a place in the enforcement of Section 7, and it cannot be disregarded in the instant case, where over 100 small firms, most with assets of less than $75,000—not to mention prospective small-firm entrants—must now contend with Procter's vast, wide-flung enterprise. In this respect, we may compare the Supreme Court's *Brown Shoe*

[44] See, e.g., H.R. Rep. No. 1191, 81st Cong., 1st Sess. 3 (1949); Mergers and Superconcentration: Acquisitions of 500 Largest Industrial and 50 Largest Merchandising Firms, *op. cit. supra* note 13, at 15.

decision, holding unlawful a merger that did not itself create or aggravate an oligopolistic market structure, but, rather, was feared to be the first step in the transformation of a traditionally small-business, atomistic industry ifito one dominated by corporate giants.[45]

It should be very clear that, in deeming Procter's size a pertinent consideration in the decision of this case, we are most emphatically *not* adopting any view that business *per se* is anti-competitive or undesirable and should be attacked under Section 7 or any other antitrust statute. Procter's size is significant in this case only insofar as it is hugely disparate compared with the size of the firms in the relevant market. Disparity of size, not absolute size, has importance in a merger case of this kind. Moreover, we do not suggest that size disparity is relevant to the decision of every merger case. Quite possibly, there are industries in which size disparity has little or no competitive significance. But we are dealing, in this case, with an industry in which advertising figures very prominently as a factor in competition. And not only is effective advertising at least a partial function of sheer weight (and may, indeed, only be fully practical for a large regional or national seller), which in turn is a function of the financial scale and capacity of the advertiser, but the discount structure of the advertising industry favors very large, national advertisers to an unusual extent. As we have seen, a multi-million dollar diversified firm such as Purex may not be able to qualify for substantial advertising discounts, while a firm the size of Procter can qualify for very substantial such discounts indeed. Size, then, is a

[45] See Adelman, *supra* note 12, at 241; Dean, *What the Courts Are Deciding: An Economist's View*, in The Climate of Antitrust—Second Conference on Antitrust in an Expanding Economy 23, 35 (National Industrial Conf. Bd. ed. 1963).

factor bearing significantly on competition in the special circumstances of this case, and we need not, and do not, have occasion to expatiate in general terms on the significance of bigness in the application of Section 7 and other antitrust statutes.

Second. Our conclusion, in the foregoing discussion, that liquid bleach is an industry in which Congress would not have wished to see domination by large firms, and that the size disparity of Procter vis-à-vis the small firms of the industry is likely to have a significant effect on the competitive structure of the industry, is not, we think, affected by the fact that, at the time of the acquisition, the market structure of the industry, from the standpoint of the maintenance of a competitive regime, was already decidedly unhealthy. On the contrary, this factor has positive weight in our determination that the merger is unlawful. As the Supreme Court has stated, "if concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great." *Philadelphia National Bank, supra;* at 365, n. 42. A merger that aggravates an already oligopolistic market structure, not by affecting the concentration ratio, as was the case in *Philadelphia National Bank*, but by affecting some other market structure variable, such as condition of entry, is highly suspect under Section 7.

It is arguable, to be sure, that the market structure of the liquid bleach industry was already so inauspicious that the substitution of Procter for Clorox cannot have made things worse, that to a firm with resources of a million dollars or less, confined to a small regional market, the difference between a Clorox and a Procter as a competitor must be largely academic. Whatever deleterious effect on competition Procter's entry into an atomistic market might

have had, it might be argued, its entry into a market dominated by one firm, by purchase of that firm, could have had no measurable such effect: the market was already rigidly non-competitive.

We are not persuaded by this argument. Despite Clorox's ascendancy, competition has never been wholly absent from the liquid bleach industry. The industry's non-competitiveness has always been relative, rather than absolute. The record is replete with instances of local, often intense, price rivalry (for example, the Erie, Pennsylvania, incident) and other kinds of competition (for example, in container design). The substitution of Procter for Clorox, by lending further rigidity to an already oligopolistic industry, could eliminate what competition remains.[46] Even if Procter's entry into the industry by purchase of Clorox has no immediate impact on competitive behavior, which is by no means clear, it must eliminate virtually all possibility of an eventual movement toward deconcentration in the liquid bleach industry. The barriers to entry, already formidable, become virtually insurmountable when the prospective entrant must reckon not with Clorox, but with Procter.

In addition, by taking the place of Clorox, the dominant firm in the highly concentrated liquid bleach industry, Procter obtains a protected market position built up by Clorox over many years, and, by virtue of Clorox's position of strength in the industry, Procter may be able to strengthen its position in other markets. Economists teach that the possession of market power enables a firm to derive higher profits ("monopoly profits") from its activities in the market than it could under more competitive conditions; the additional profits, in turn, endow the firm with

[46] See *Consolidated Foods Corp.*, F.T.C. Docket 7000 (decided November 15, 1962), p. 21; Bok, *supra* note 18, at 310; Blair, *supra* p. 51, at 693.

added power to meet its rivals in other markets. In this fashion, substantial market power, which Clorox, as the dominant firm in an oligopolistic market, seems clearly to possess, is transferable as between seemingly unrelated industries.[47] This kind of leverage has long been familiar in many contexts of antitrust enforcement. See, e.g., *United States* v. *Great A. & P. Tea Co.*, 173 F. 2d 79, 86-87 (7th Cir. 1949). For example, it is one of the premises upon which various forms of vertical integration have been held unlawful. See, e.g., *Reynolds Metals Co.* v. *F. T. C.*, 309 F. 2d 223 (D.C. Cir. 1962). It was recently deemed material in a Section 7 proceeding involving a market-extension merger. *Foremost Dairies, Inc.*, F. T. C. Docket 6495 (decided April 30, 1962), p. 44.

Since Procter is already a leading manufacturer of a number of products, its acquisition of Clorox, by strengthening Procter's aggregate market position, may lead to an impairment of competition in many industries besides liquid bleach. And since Clorox and Procter are engaged in the manufacture of closely related products, more direct possibilities of exploiting in other markets Clorox's substantial market power arise—for example, the use of Clorox bleach, as a tying product, loss leader, or cross-coupon offering, in conection with efforts to promote other Procter products. These too are forms of extending monopoly or market power that have long been familiar in antitrust enforcement. See, e.g., *Northern Pac. R. Co.* v. *United States*, 356 U. S. 1. The president of Procter put the matter succinctly: "We may be able to derive addi-

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[47] See Burns, The Decline of Competition 453 (1963); Dirlam & Kahn, Fair Competition: The Law and Economics of Antitrust Policy 142-150 (1954); Adelman, *Integration and Antitrust Policy*, 63 Harv. L. Rev. 27, 45-46 (1949); Stigler, *supra* note 36, at 184; Blair, *supra* p. 51, at 686-87; Comment, 72 Yale L. J. 1265, 1269, n. 22, 1270, no. 28 (1963).

tional value from the Clorox name for other new and related products." Purex, for example, is already hard pressed to compete effectively with Clorox in the liquid bleach industry and with Procter in the abrasive cleanser, packaged detergent, and toilet soap industries; it may find itself in a powerful competitive pincers as the result of the fusion of its leading rivals in the several industries in which it is active.

Moreover, it would be a curious result, and one hard to reconcile with the Supreme Court's emphasis on the importance of fostering deconcentration in an already unduly concentrated industry,[48] for this Commission to hold that a firm, if it succeeds in dominating, and substantially eliminating competition in, its own market, thereby becomes freely salable at a high premium to a giant conglomerate enterprise. For the Commission to conclude that the acquisition of a firm which has successfully snuffed out most of the competitive vigor in its market raises no question under Section 7, would be to provide an incentive to firms to achieve market dominance in order to become attractive offerings to the large conglomerate corporations.

In light of these considerations, we are persuaded that a merger involving a leading firm in a market [redacted] is already well on the way to a non-competitive structure may be unlawful under Section 7 even where the aggravation of non-competitive market conditions by the merger may seem relatively slight because of the already advanced oligopoly condition of the market. Perhaps conceptual difficulties are encountered if such a merger is deemed to violate Section 7's "substantially to lessen competition" clause, since effective competition may already have substantially disappeared. If so, resort may be had, with

[48] See pp. 57-58 above. Cf. Edwards, Big Business and the Policy of Competition 125 (1956).

entire propriety, to the statute's tendency-to-monopoly clause. For, " 'tend to create a monopoly' clearly includes aggravation of an existing oligopoly situation." *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576, 607 (S.D.N.Y. 1958). See Blair, *supra* p. 51, at 699-700. Cf. p. 27, n. 23 above.

Third. A factor closely related to the foregoing is that the merger eliminates the salutary effect of Procter as a *potential* competitor of Clorox in liquid bleach. At the time of the merger, Procter was a progressive and experienced manufacturer of many products in the same product line as liquid bleach; it had in the past frequently extended its product line by introducing a new brand in an industry in which it had not theretofore been active; it was one of the very few manufacturers of household products in the same general line as liquid bleach that was powerful enough to challenge, with some hope of success, Clorox's entrenched position in the bleach market; and it had actually pondered the possibility of entry into the liquid bleach market on its own. By virtue of all these facts, Procter must have figured as a tangible influence on Clorox's policies until the merger eliminated it as a potential competitor. Procter, though *in absentia*, was nonetheless, by reason of its proximity, size, and probable line of growth, a substantial competitive factor in the liquid bleach market. We have said that the possibility of new entry may exercise a restraining influence upon oligopolistic firms, inclining them to maintain prices at a level low enough to discourage entry. Prior to the merger, Procter was not only a likely prospect for new entry into the bleach market, it was virtually the only such prospect. Once the threat of Procter's entry vanished, one of the last factors tending to preserve a modicum of competitive pric-

ing and business policies in the liquid bleach industry was removed. As the Commission, in a related context, has had occasion to observe, "When market concentration is high, the main, and sometimes the only, restraint on the use of market power by oligopolistic sellers is potential competition." *Foremost Dairies, Inc., supra*, at 50.

We have no occasion to speculate on such questions as whether or not Procter, had its acquisition of Clorox been blocked, would in fact have entered the bleach industry on its own, or whether or not, had it done so, the result would have been to increase competition in the industry—although, with reference to the second question, we note the Supreme Court's recent observation that "one premise of an antimerger statute such as § 7 is that corporate growth by internal expansion is socially preferable to growth by acquisition." *Philadelphia National Bank, supra*, at 370. See Kaysen and Turner, Antitrust Policy 135 (1959). It is sufficient that the tangible possibility of Procter's entry on its own into the liquid bleach industry was a continuing and important pro-competitive influence in that industry, and that the acquisition of Clorox, by eliminating that possibility, thereby removed a critical check on the power of Clorox to stifle effective competition in the sale of household liquid bleach.

Fourth. Another factor which supports a finding that this merger is illegal is Procter's strong market position in other (and larger) industries, notably packaged detergents, which we have already mentioned. No rigorous analysis of market structure in the other industries in which Procter is active was attempted in this case. It would be impractical, in light of the critical importance of channeling Section 7 proceedings within reasonable bounds of simplicity, to undertake, in every case of a conglomerate

merger, a comprehensive study of each market in which the conglomerate enterprise operates. But, if we are not entitled to infer that Procter is able to subsidize Clorox's activities in the liquid bleach market out of "monopoly profits" (including profits attributable to market power short of outright monopoly) gleaned by Procter from its activities in other markets, or otherwise to transfer monopoly or market power enjoyed in other markets into the bleach market (see JA 452a), we at least know, from the record of this case, that Procter is well established in a number of separate product markets (see pp. 10-11, n. 4 and pp. 11-12 above). We know, for example, that Procter possesses a 54.5% share of one market, packaged detergents, in which three firms account for 80% of total sales and which we earlier found (see JA 406a) closely resembles the household liquid bleach industry. On these facts, it is scarcely to be doubted that Procter, the biggest of the "Big Three" of the household cleansing agents industry, possesses some degree of market power in the packaged detergent and other product markets within the general field, although perhaps not so much as Clorox possesses in its market.

At the least, Procter's manifest strength in markets other than liquid bleach rebuts any inference that Procter cannot wield the advantages that flow both from its own financial size and strength and from the dominant position in the liquid bleach industry enjoyed by Clorox.' If Procter were shown to be spread thin throughout its many fields of endeavor, the significance of its apparently decisive competitive advantage over its liquid bleach competitors might be impaired; but that, clearly, is not the case.

Procter's strength in other markets may have, as well, a positive—though by no means conclusive—significance

in appraising the effect of this merger on competition in the liquid bleach market. Even if such strength has not been proved to reach the level at which monopoly profits or other fruits of great market power are forthcoming, it is relevant to the psychological response of the members of the liquid bleach industry to Procter as a competitor. To the extent that Procter is thought by them to be not only a large and affluent firm, but also a powerful firm, in terms of market power enjoyed in related markets and possibly transferable into the bleach market, its prowess as a competitor gains an added and even sinister dimension in the eyes of its liquid bleach rivals—a factor of considerable importance to the impact of the merger on competition in the bleach industry. Cf. Blair, *supra* JA 442a, at 690; Edwards, *supra* n. 22, at 335-36.

Thus, just as ownership of Clorox may enable Procter to enhance its competitive edge in other markets, so Procter's position in other markets may enhance its dominance, through its acquisition of Clorox, of the liquid bleach industry. Purex, we noted, now competes with Procter in the liquid bleach as well as in the packaged detergents industry, and it may be inclined to act cautiously in the liquid bleach market for fear of provoking Procter's retaliation along the whole front of Purex's activities.

The short of it is that a conglomerate merger involving firms which have dominant power in their respective markets tends to reinforce and augment such power. Procter's willingness to pay a very substantial amount of money for the good will of Clorox bespeaks its ability, as a large and diversified firm which has seemingly exhausted the possibilities of further expansion in the numerous markets in which it has won a dominant position, to use the ample surplus it has accumulated in the process in order to achieve

dominance in still another market by purchase of that market's dominant firm.[49] We emphasize here that we are discussing only corporate expansions through *acquisition*, and not through internal growth. In enacting Section 7, which deals only with mergers, Congress was expressing its special concern with those *acquisitions* which result in the mutual entrenchment of unhealthy market situations, and thus bear grave consequences for the future of our competitive economy.

Fifth. In stressing as we have the importance of advantages of scale as a factor heightening the barriers to new entry into the liquid bleach industry, and so impairing competitive conditions in that industry, we reject, as specious in law and unfounded in fact, the argument that the Commission ought not, for the sake of protecting the "inefficient" small firms in the industry, proscribe a merger so productive of "efficiencies." The short answer to this argument is that, in a proceeding under Section 7, economic efficiency or any other social benefit resulting from a merger is pertinent only insofar as it may tend to promote or retard the vigor of competition. As the Supreme Court has held (see JA 410a-411a), Congress did not mean the adjudicators of Section 7 cases to attempt to weigh the ultimate social and economic merits and demerits of a merger, but only to determine its effect on competition and monopoly. A merger that results in increased efficiency of production, distribution or marketing may, in certain cases, increase the vigor of competition in the relevant

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[49] See Klaw, "The Soap Wars: A Strategic Analysis," *Fortune*, June 1963, pp. 122, 198; Blair, *supra* p. 51, at 693; Boggis, *Merger Movements in Industry—The Diversification Threat*, 13 Cartel 32, 37 (Jan. 1963). In this connection we note that between 1955 and 1957, Procter acquired, besides Clorox, a manufacturer of paper products and several manufacturers of food products, for a total consideration, in cash and stock, of about $30,000,000.

market.[50] But the cost savings made possible by the instant merger serve, we have seen, not to promote competition, but only to increase the barriers to new entry into the relevant market, and thereby impair competition.

A more complete answer to the argument that this merger should be upheld on account of its "efficiencies" is that cost advantages of scale are of more than one kind, and that the kind involved in this merger, far from representing a net social benefit, is independently offensive to at least the spirit, if not the letter, of the antitrust laws. For one thing, the savings chiefly involved here, which are savings in advertising and sales promotions (Procter does not contend that the merger will enable substantial economies of production or physical distribution), are, it seems, achievable only by firms of very large absolute size. See Bain, Industrial Organization 170, 172-73 (1959). When we reflect that a firm, Purex, with total sales of almost $50,000,000 in 1957 and a proportionally large advertising budget, was evidently unable to obtain any but the minimum volume discounts available to large television advertisers, we can only conclude that the large-scale advertising "economies" involved in this case represent price concessions available only to giant firms, and bear little relationship to ordinary notions of economic "efficiency."

More important, while we do not doubt that marketing economies, including those of advertising and sales promotion, are as socially desirable as economies in production and physical distribution, there does come a point "at which product differentiation ceases to promote welfare and be-

[50] However, the danger is very great that where any two firms in an oligopolistic market merge, the fruits of the merger will be used not to enhance, but to retard, competition. See *American Crystal Sugar Co. v. Cuban-American Sugar Co.*, 152 F. Supp. 387, 399-400 (S.D.N.Y. 1957), aff'd, 259 F.2d 524 (2d Cir. 1958); Comment, 68 Yale L. J. 1627, 1674 (1959).

comes wasteful, or mass advertising loses its informative aspect and merely entrenches market leaders." [51] We think that point has been reached in the household liquid bleach industry. In short, the kind of "efficiency" and "economy" produced by this merger is precisely the kind that—in the short as well as the long run—hurts, not helps, a competitive economy and burdens, not benefits, the consuming public.

Advertising performs a socially and economically useful function insofar as it educates the consumer to the broad range of product alternatives that he should consider in seeking to make an optimal allocation of his necessarily limited economic resources. Advertising, then, should stimulate competition and, by increasing the sales of the advertised product, lower the unit cost of that product. But this process is distorted in the case of a homogeneous product, such as household liquid bleach, produced under conditions of oligopoly, such as obtain in the liquid bleach industry. Since there is no reason (save cheapness and availability) for a consumer to prefer one brand of liquid bleach over another, there is no real need for the various manufacturers to incur as heavy advertising expenses as they do—except to protect their market shares. Heavy advertising, under such conditions, does not, in any meaningful sense, serve to broaden the consumer's range of product alternatives. Moreover, since oligopolists typically refrain from price competition, large advertising expenditures in the liquid bleach industry have not resulted in a lower unit price to the consumer. (Clorox, the most extensively advertised liquid bleach, is also the most expensive for the consumer.) Thus we have a situation in which heavy advertising benefits the consumer, who pays for such

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[51] Dirlam, *supra*, note 13, at 103.

advertising in the form of a higher price for the product, not at all."[52]

This situation is simply an example of a latent ambiguity in the term "competition." All forms of business rivalry are, in a sense, "competition," but not necessarily in the sense contemplated by Section 7 and the other antitrust laws. Price cutting is normally a manifestation of healthy competition. Predatory price cutting, however, is not. It tends to stifle true competition, and is often itself a violation of the antitrust laws. Similarly, sellers who vie with one another, through advertising and other promotional activities, to create a consumer preference for their brands, may be laudably engaged in competition such as the antitrust laws are intended to protect. On the other hand, such sellers may, as here, be engaged in brand "competition" to the end only of maintaining high prices, discouraging new entry, and, in general, impairing, not promoting, socially useful competition.

In sum, the undue emphasis on advertising which characterizes the liquid bleach industry is itself a symptom of and a contributing cause to the sickness of competition in the industry. Price competition, beneficial to the consumer, has given way to brand competition in a form beneficial only to the seller. In such an industry, cost advantages that enable still more intensive advertising only impair price competition further; they do not benefit the consumer.

E. Post-Acquisition Evidence

In holding this merger unlawful under Section 7, we expressly decline to place reliance on certain facts which, in the view of the hearing examiner, helped demonstrate

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[52] See Taplin, Advertising: A New Approach 107-110 (1963); Blair, *supra* p. 51, at 681.

the merger's unlawfulness. It should be noted that the hearings in this case were conducted, for the most part, under the aegis of the Commission's decision in *Pillsbury Mills, Inc.*, 50 F.T.C. 555. Experience in the trial of merger cases, now confirmed by the Supreme Court, has exposed the fallacy of supposing that a broad-gauged inquiry into every business and economic fact remotely relevant to the economic effect of a merger—the kind of inquiry the Commission in *Pillsbury Mills* held it must undertake under Section 7—is productive of more rational decisions. Broad principles of relevancy and materiality may have been appropriate when the law of Section 7 was still fluid and unsettled, but it is now clear that the path toward just and effective enforcement of the statute lies in the direction of narrowing the scope of necessary or permissible inquiry.

In the particular circumstances here, most of the considerable amount of post-acquisition evidence introduced at the hearings was entitled to little weight. We have already canvassed the considerations that make such evidence rarely of much probative value (see JA 427a-428a); suffice it to say that those considerations are applicable in this case. Were the post-acquisition evidence in this case to be considered, it might furnish some support for the finding we have made wholly on the basis of other factors. Since the merger, Clorox's market share has continued to increase. In 1961, Clorox's overall market share was 51.5% as compared to 48.8% in 1957, while its share in, for example, the New England region, had risen in this period from 56% to 67.5%. Procter has introduced sales promotions on a fairly large scale ($2,000,000 in four years) in behalf of Clorox. Purex has acquired the fourth largest liquid bleach producer (thus increasing concentration in the industry), after, and according to an official of Purex,

in part because of, losing a "brand war" to Clorox-Procter in Erie, Pennsylvania. And Procter has obtained, for Clorox, certain advertising economies. None of these phenomena, we think, proves that the merger is unlawful, for it is difficult to know to what extent they were produced by the merger, and not by other factors. However, if we were to consider them, we would have to find that they corroborated or confirmed the conclusion of illegality grounded in solid evidence of the structure of the market at the time of the merger.

Had Procter in fact fully integrated the marketing and other activities of Clorox in its overall organization, perhaps dramatic post-acquisition changes, directly traceable to the merger, would have occurred. But, save for taking advantage of certain advertising cost advantages and introducing sales promotions, Procter in the period covered by the post-acquisition evidence has carefully refrained from changing the nature of the Clorox operation; even the network of independent brokers has been retained. Such restraint appears to be motivated by a general Procter policy of moving slowly and cautiously in a new field until the Procter management feels totally acclimated to it. It is possible, as well, that the pendency of the instant proceeding has had a deterrent effect upon expansionist activities by Procter in the liquid bleach industry.

Most important, however, so far as post-acquisition evidence in this case is concerned, is the fact that there has been no dramatic change in market structure or behavior in the years since the merger. This means that there is no reason to suppose that an analysis based upon market structure at the time of the merger need be reexamined, qualified or discarded in the light of subsequent events. Where, as here, the period since the acquisition has been relatively uneventful, there is certainly no basis for accord-

ing particular weight to the post-acquisition evidence that found its way, needlessly, into the record.

IV. Relief

The last point to be considered is the nature of the relief to be ordered. The order in the initial decision would require respondent to divest itself of the acquired assets through sale. Respondent raises two main objections to this order.

First, it contends that divestiture is not called for in these circumstances, because the public interest can be protected by an order enjoining Procter from exercising the opportunities for enhancing Clorox's dominance of the liquid bleach industry which the Commission has found resulted from the merger. It is settled, however, that divestiture is normally the appropriate remedy in a Section 7 proceeding. *United States* v. *E. I. duPont de Nemours & Co.*, 366 U. S. 316. This case would be a particularly inappropriate one in which to make an exception. The anticompetitive effects of this acquisition are not enjoinable. They inhere in the very presence of Procter, standing in the place of Clorox in the liquid bleach industry, and can be corrected only by restoration of the market structure, so far as possible, as it existed at the time of the acquisition.

Second, respondent objects to the provision in the order entered by the hearing examiner that sale of the acquired assets cannot be made to anyone "who is at the time of divestiture, or for two years before said date was, a stockholder . . ." of Procter. Recognizing that the purpose of a Section 7 proceeding is in no sense punitive, that the sale of an absorbed firm may be difficult to accomplish within a reasonable period of time, and that in the case of a large

publicly-owned corporation the common ownership by the shareholders of both the acquired and the acquiring firms is not necessarily inconsistent with a meaningful separation of the firms, the Commission recently approved an order permitting a Section 7 respondent to spin off the acquired assets to a new corporation, the stock of which would then be distributed to the shareholders of respondent. *Consolidated Foods Corp.*, F. T. C. Docket 7000 (decided Nov. 15, 1962), p. 22; see *id.*, Memorandum Accompanying Final Order (issued March 22, 1963). There is no apparent reason why this respondent should not be permitted thus to spin off the acquired assets to a new corporation or corporations, if it so desires, and we have modified the order entered by the hearing examiner accordingly.

Commissioner Anderson concurs in the result.

November 26, 1963.

FEDERAL TRADE COMMISSION
WASHINGTON 25, D. C.

OFFICE OF THE SECRETARY

December 19, 1963

Dinsmore, Shohl, Barrett,
Coates & Deupree
Union Central Building
Cincinnati 2, Ohio

Royall, Koegel, Harris & Caskey
1730 K Street, N. W.
Washington 6, D. C.

William J. Boyd, Jr., Esquire
Federal Trade Commission
Washington 25, D. C.

Letter Amending Opinion

Re: The Procter & Gamble Company
Docket 6901

Dear Sirs:

The opinion of the Commission in the above proceeding, issued November 26, 1963, has been emended in the following particular: The word "come" has been substituted for the word "reach" in the top line on page 66 of the opinion.

By direction of the Commission.

/s/ JOSEPH W. SHEA
JOSEPH W. SHEA,
Secretary.

EXTRACTS FROM THE RECORD IN THE PROCTER & GAMBLE COMPANY v. FEDERAL TRADE COMMISSION, ET AL., CIVIL ACTION No. 3798-61, USDCDC

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3798-61

THE PROCTER & GAMBLE COMPANY, an Ohio corporation, having its principal office and place of business at 301 East Sixth Street, Cincinnati, Ohio,

Plaintiff,

—against—

FEDERAL TRADE COMMISSION; PAUL RAND DIXON, SIGURD ANDERSON, WILLIAM C. KERN, PHILIP ELMAN, EVERETTE MacINTYRE, individually and as Commissioners of the Federal Trade Commission; and EVERETT F. HAYCRAFT, individually and as Hearing Examiner of the Federal Trade Commission, Pennsylvania Avenue at 6th Street, N.W., Washington, D. C.,

Defendants.

COMPLAINT TO DECLARE INVALID CERTAIN ORDERS ISSUED BY THE DEFENDANTS AND FOR INJUNCTIVE RELIEF

(Filed November 24, 1961)

1. This is an action of a civil nature to declare the invalidity of and to obtain an injunction temporarily and permanently restraining the defendants and each of them from proceeding under an order issued by the Federal Trade Commission on June 15, 1961, and an order made by defendant Everett F. Haycraft on November 6, 1961, in a

proceeding had by that Commission entitled "In the Matter of The Procter & Gamble Company, a corporation, Docket No. 6901." This action arises under the Administrative Procedure Act (60 Stat. 237, 5 U.S.C. § 1001, et seq.), and under provisions of the Clayton Act (64 Stat. 1125, 15 U.S.C. 21), and also under the Federal Declaratory Judgment Act (48 Stat. 955, 28 U.S.C. 2201, et seq.), and Amendment V of the Constitution of the United States. Jurisdiction of this Court is conferred by District of Columbia Code §§ 11-305, 11-306, and § 24(8) of the Judicial Code (28 U.S.C. § 1337) and by §§ 6(a) and 10(e) of the Administrative Procedure Act.

The defendants individually and, respectively, as the Federal Trade Commission, and as Commissioners of the Federal Trade Commission, and as a Hearing Examiner of the Federal Trade Commission, are found in the District of Columbia, maintain their offices or are to be found in the District of Columbia, and the illegal acts and threatened illegal acts of the defendants have taken place within or will, if not enjoined, take place in the District of Columbia.

Description of the Parties

3. Plaintiff is a corporation duly organized and existing under the laws of the State of Ohio, with its principal office and place of business at 301 East Sixth Street, Cincinnati, Ohio.

4. The defendants, Paul Rand Dixon, Sigurd Anderson, William C. Kern, Philip Elman and Everette MacIntyre are duly appointed Commissioners of the Federal Trade Commission. The defendant Everett F. Haycraft is a duly appointed Hearing Examiner of the Federal Trade Commission.

Definitions and Descriptions

5. As used in this complaint:

(a) "Procter" means the plaintiff herein and the respondent The Procter & Gamble Company in said proceeding before the Federal Trade Commission, Docket No. 6901.

(b) "Clorox" means the Clorox Chemical Company, the assets and business of which were acquired by Procter on August 1, 1957, and its successor The Clorox Company, a wholly owned subsidiary of Procter.

(c) "Said Proceeding" means a proceeding commenced by complaint before the Federal Trade Commission and bearing Docket No. 6901, in which Procter was named as respondent.

(d) "Commission" means the Federal Trade Commission.

(e) "Hearing Examiner" means the defendant Everett F. Haycraft.

(f) "Commission's Counsel" means counsel appearing in said Proceeding in support of the complaint filed therein.

History of Said Proceeding

6. On May 28, 1957, Procter entered into an agreement with Clorox which provided in substance for the purchase by Procter of all of the assets and business of Clorox. This agreement (negotiations for which had been initiated by the representatives of Clorox) contained a provision that the rights and obligations of the parties thereunder were subject to the requirements of and compliance with any applicable Federal law. It was further provided that "if litigation or administrative proceedings in connection with such compliance are commenced prior to closing, then

either party may on thirty days notice cancel and terminate this Agreement."

7. In the spring of 1957 the Commission commenced an investigation of said acquisition and in connection therewith asked for and received from Procter certain books, records and other documents, including a copy of said acquisition agreement of May 28, 1957.

8. Prior to the closing date of August 1, 1957 the Commission had before it all relevant facts concerning the acquisition by Procter of the assets and business of Clorox and was fully advised of the terms of the said contract of acquisition of May 28, 1957, including the right of the parties to cancel said agreement in the event that an administrative proceeding questioned the validity of said acquisition. Nevertheless, the Commission did not notify either of the parties to said acquisition agreement that there was any question with respect to said acquisition and the Commission did not request a delay in the consummation of said contract pending further investigation or study.

9. On August 1, 1957, not having received any indication from the Commission or any other governmental bureau, branch or department that the proposed acquisition was in any way questionable, Procter acquired the assets and business of Clorox in accordance with the terms of said agreement of May 28, 1957.

10. Thereafter, on September 30, 1957, the Commission without any notice or advance warning, and purporting to act pursuant to § 11 of the Clayton Act, commenced the Proceeding against Procter by the issuance of a complaint by the Commission. The said complaint purported to charge Procter with a violation of § 7 of the Clayton Act alleging that the acquisition by Procter of the assets and business of Clorox may have the effect of substantially

lessening competition or tending to create a monopoly in the production and sale of household liquid bleaches in the United States. Said Proceeding so commenced was pending before the Commission or its Hearing Examiner from the date of issuance of said complaint until the issuance of an opinion and order by the Commission on June 15, 1961. Said opinion of the Commission expressly stated that the facts established on the trial of said Proceeding did not warrant the issuance of an order to cease and desist or of divestiture. To the contrary, the Commission found that the proof adduced on the trial of said Proceedings, for the period during which evidence had been offered by Commission's Counsel, was insufficient to sustain the complaint. Nevertheless, the Commission, on its own motion and without any notice or request by any of the parties to said Proceedings, purported to remand the said Proceeding to the Hearing Examiner in order to permit Commission's Counsel to try for a second time to establish facts sufficient to warrant the issuance of an order directing Procter to divest itself of all assets and properties of Clorox which it had acquired.[4] In fact, it is the claim of the Commission that the said Proceeding is still pending before it and its Hearing Examiner.

11. A summary of some of the steps taken in said Proceeding, since the commencement of said Proceeding in 1957, is as follows:

(a) On November 4, 1957, Procter filed its answer in said Proceeding denying all charge of illegality.

(b) On December 5, 1957, Commission's Counsel served on Procter a broad subpoena *duces tecum* calling for the production of books, records and other material. While this subpoena was limited by the Hearing Examiner on Procter's motion, such limitation was stricken on March 26, 1958, as the result of an interlocutory appeal to the

Commission, so that there became available to Commission's Counsel all of the material which such counsel believed he needed from Procter in connection with the presentation of his case.

(c) In the meanwhile, the Hearing Examiner scheduled and in fact held a large number of hearings in the cities of Cincinnati, San Francisco, Los Angeles, Chicago, Philadelphia, New York, Boston, Buffalo, Detroit and Washington, in which Commission's Counsel was given every opportunity to adduce all evidence available to him and the Commission in support of the allegations of the complaint issued in said Proceeding.

(d) Said hearings commenced on December 16, 1957.

(e) On August 26, 1958, Commission's Counsel closed his case in chief.

(f) From November 17th through November 26, 1958 and thereafter, in accordance with the Hearing Examiner's Schedule, from January 5th through January 9, 1959 Procter adduced evidence in Washington consisting of the testimony of fourteen witnesses. During the course of the hearings Procter identified 132 exhibits.

(g) Commencing on January 26, 1959 and concluding on February 12, 1959, Commission's Counsel offered rebuttal testimony in Washington.

(h) In the course of said Proceeding Commission's Counsel introduced oral testimony of thirty witnesses, making a record of 4,352 pages, and identified approximately 700 exhibits, comprising many hundreds of pages.

(i) A total record of 6,208 pages having been made and over 800 exhibits, totalling many thousands of additional pages, having been received, and both parties having rested, the hearings were concluded on February 12, 1959, when Commission's Counsel agreed that he would seek no further evidence if Procter entered into stipula-

tions of fact. The stipulations were made and both parties thereupon consented, on February 12, 1959, to the Hearing Examiner's closing the testimony. Annexed hereto as Exhibit A are excerpts from the transcript of the hearing in said Proceeding for February 12, 1959, containing references to the said stipulations and the ruling of the Hearing Examiner closing the testimony.

(j) Thereafter, the parties to said Proceedings, including Commission's Counsel, filed numerous briefs and proposed findings of fact and conclusions of law.

(k) On June 17, 1960, the Hearing Examiner, reciting that the reception of evidence having been concluded, made an order that all proceedings before the Hearing Examiner in said Proceeding be closed. A copy of the order closing all proceedings before the Hearing Examiner is annexed hereto as Exhibit B and hereby incorporated herein and made a part hereof.

(l) On June 17, 1960, the Hearing Examiner, without having reopened the case or having been requested to do so by any party, including the Commission's Counsel, rendered his inital decision in said Proceeding. The said initial decision contained extensive findings of fact and conclusions of law. The Hearing Examiner found that there was evidence in the record indicating that the effect of the acquisition of Clorox by Procter may be to suppress competition and tend to result in increased concentration in the production and sale of household liquid bleach. Accordingly, the Hearing Examiner ordered Procter to cease and desist from violating § 7 of the Clayton Act and to divest itself of all assets acquired by Procter from the Clorox Chemical Company and to restore Clorox as a going concern in the manufacture and sale of household liquid bleach in substantially the same productive capacity as was possessed by Clorox at or immediately prior to the time of the acquisi-

tion. A copy of the initial decision of the Hearing Examiner is annexed hereto as Exhibit C and hereby incorporated herein and made a part hereof.

(m) On July 15, 1960, notice of intention to appeal from the initial decision of the Hearing Examiner was filed by Procter. On that same date, notice of intention to appeal was filed by Commission's Counsel with respect to the alleged failure of the Hearing Examiner to make certain findings of fact in his initial decision and with respect to certain rulings of the Hearing Examiner during the course of the hearings.

(n) Briefs having been filed by all parties to said Proceeding, the Commission heard full argument on both appeals in said Proceeding on March 14, 1961.

(o) Neither by any briefs or oral argument nor in any other way did Commission's Counsel request the Commission to reopen or to remand the proceeding to the Hearing Examiner for any purpose whatever. The argument of Commission's Counsel in support of that portion of his notice of intention to appeal dealing with the Hearing Examiner's limitations upon counsel's proof, far from requesting a reopening of the proceedings, sought merely an adoption by the Commission of certain findings of fact and conclusions tendered by Commission's Counsel and based only upon the evidence already in the record.

Wrongful Acts of Defendants

12. On June 15, 1961, after the presentation and submission of the appeals, the Commission filed an opinion and order in which it disagreed with the conclusions of the Hearing Examiner. The Commission, after considering the evidence adduced at the hearings on said Proceeding concluded that it did not support the Hearing Examiner's conclusion as to the lessening of competition. The Commis-

sion further held that as the record did not in its opinion contain an adequate basis for reaching a determination, the Commission "might dismiss the complaint." The Commission, however, did not follow such course, which was and is so clearly indicated by the applicable rules, laws and statutes. On the contrary, the Commission, without any charge or allegation by any party or by the Commission itself that there were any changed conditions of fact or law or changed circumstances or that there was any newly discovered evidence or indeed any additional evidence whatever which might change the result, made and issued an order remanding the proceeding to the Hearing Examiner for the reception of evidence relating to the competitive situation as it "presently exists" in the household liquid bleach industry. A copy of the Commission's opinion and order of remand is annexed hereto as Exhibit D and hereby incorporated herein and made a part hereof.

13. The said order of remand reopening the Proceeding, made by the Commission as aforesaid, was not only made without the request and without any showing by any party for such an order but without any notice to Procter that such action was contemplated or might be taken by the Commission and without an opportunity for Procter to take any position or defend itself with respect thereto.

14. The original trial was devoted almost entirely to evidence relating to the competitive situation in the household liquid bleach industry prior to the time of the said acquisition and subsequent thereto. In this connection, Commission's Counsel introduced in evidence the testimony of representatives of 13 manufacturers of liquid bleach located in various areas in the United States.

15. In spite of the voluminous evidence on the issue of the said acquisition by Procter, the Commission correctly concluded that the record did not support the complaint.

But nevertheless, instead of performing its ministerial duty of dismissing the complaint, it improperly, unlawfully and capriciously remanded the Proceedings and, as will more fully appear below, subjected and intends to subject Procter to further proceedings with respect to the very subject matter as to which the record established no wrongdoing by Procter.

16. On November 6, 1961, the Hearing Examiner issued in said Proceeding a notice to the effect that, pursuant to and in conformity with the said order of remand made by the Commission on June 15, 1961, he was setting down the said Proceeding for further hearings commencing November 30, 1961. A copy of this notice is annexed hereto as Exhibit E and hereby incorporated herein and made a part hereof. This action of the Examiner, being based on the unlawful action of the Commission is likewise without validity.

17. In the course of the lengthy Proceedings herein, Procter has expended many thousands of dollars in the defense of said Proceeding. Among the substantial expenses incurred have been those necessitated by the making of lengthy studies and surveys, collating documents, obtaining market data, preparations to testify and testimony given by officers and employees of Procter and Clorox with respect to the liquid bleach industry as well as the competitive situation in that industry; the interviewing of many potential witnesses concerning the economic effects of said acquisition, as well as the preparation of findings and conclusions, briefs and arguments of the points involved in the said Proceeding, including principally questions relating to the competitive situation in the liquid bleach industry.

18. During the said preparation for and trial of the said Proceeding a portion of the business of Procter was

seriously disrupted. Personnel in the various departments of Procter and Clorox were prevented from attending to their usual duties and business while engaged in the preparation for and giving of testimony in the said Proceeding.

19. During the trial of said Proceeding and upon the initial decision thereof by the Hearing Examiner, Procter was subjected to unfavorable publicity through Commission press releases or reports by the local press, as a consequence of which the public relations of Procter and Clorox were unfavorably affected.

20. The pendency of the lengthy Proceeding herein before the Commission has resulted in household liquid bleach business being operated in an atmosphere of doubt and uncertainty. Procter has been handicapped in making plans for its future in the household liquid bleach business. All of the foregoing uncertainties are detrimental to Procter and its stockholders.

21. If the action by the Commission and the Hearing Examiner under said illegal, unlawful and improper order of remand of June 15, 1961, is not enjoined herein, Procter will suffer irreparable injury and damage:

(a) All of the uncertainties in the conduct of Procter's business, as hereinabove alleged, and the expenses and other harmful results therefrom, will be indefinitely continued and perpetuated.

(b) Procter will be required to go to trial again upon the same issues already expensively litigated and adjudicated in its favor in said Proceeding. It will be required again to expend large sums of money and again to disrupt various departments and personnel for the purpose of again preparing to meet the same issues which have already been completely disposed of by said order and opinion of the Commission of June 15, 1961, that the evidence in the

record was insufficient to sustain the complaint or warrant the issuance of an order against Procter.

(c) Procter, in the course of a retrial of the same issues previously disposed of, will again be subjected to unfavorable publicity whether in the form of press releases or reports by the local press of rehearings in said Proceeding.

(d) Procter will be subjected to an indefinite and never-ending litigation. For in the trial of any proceeding there must of necessity always be a lapse of time between the close of evidence and final determination. Accordingly, if the illegal action of the Commission is not enjoined by this Court, the Proceeding against Procter may be kept open forever by the expediency of successive remands to bring the evidence up to date.

22. As the Commission's purported order of remand of June 15, 1961 is not an order to cease and desist or of divestiture or other final order for which there is specific provision for review in the Clayton Act, the only recourse of Procter to obtain prompt, adequate and effective remedy by judicial action, to which it is entitled under the Administrative Procedure Act and the Constitution, is in this Honorable Court by means of the instant suit.

23. The said order of the Commission of June 15, 1961, in so far as it purports to remand said Proceeding to the Hearing Examiner, and in so far as it requires Procter further to again prepare and to defend the issues in this case (which issues have been previously disposed of by the Commission, as aforesaid) and also the order of November 6, 1961 of the Hearing Examiner seeking to implement said order of June 15, 1961, are arbitrary and capricious, void, beyond the Commission's jurisdiction, without any statutory right, power or sanction, violate the Clayton Act, the Administrative Procedure Act and the Rules of Practice of the Commission. Said order of the Commission

deprives Procter of its property without due process of law in violation of Amendment V of the Constitution of the United States, for the following reasons, among others:

(a) Said order of the Commission, following more than four years of investigatory and trial proceedings, violates the Administrative Procedure Act, imposing upon the Commission the duty to conclude a case with reasonable dispatch.

(b) Said order was made and issued without any prior notice to Procter that the action taken by that order was contemplated by the Commission or was an issue to be disposed of upon the hearing before the Commission of said Proceeding.

(c) Said order violates the Clayton Act and the Commission's Rules of Practice in that it purports to reopen said Proceeding after the evidence and all proceedings in said Proceeding had been closed, as the Commission itself held, without any showing of compliance, or possibility of compliance, with the Act and the Rules of the Commission relating to reopening of proceedings.

(d) The said order is arbitrary and capricious in that it was made without request therefor by Commission's Counsel and without any showing that there was newly discovered evidence or indeed any further relevant evidence at all available for introduction in said Proceeding.

(e) The said order, made in excess of and without any statutory right, power or sanction but in derogation of the pertinent statutes and rules as aforesaid, aggravates the harassment of an already large and lengthy Proceeding and extends the disruption of Procter's business, thereby depriving Procter of its rights without due process of law.

(f) Said order of remand violates the requirement of impartial conduct by the Commission in that the Commission, by ordering a remand rather than dismissing the

complaint as it is required to do where the evidence is insufficient to sustain it, has acted not in its quasi-judicial but in its prosecuting capacity for the purpose of giving to Commission's Counsel a further and additional opportunity to seek evidence to sustain the complaint and enable the Commission to make an order in accordance with its unsupported views, if not prejudgment, of the issues presented and the evidence to be adduced.

24. Procter will be irreparably damaged herein unless temporary and permanent injunction is issued enjoining the defendants and each of them from taking further action herein in pursuance of the said order or remand of June 15, 1961. Procter has no adequate remedy at law.

WHEREFORE, Procter prays that judgment may be made and entered:

(i) Declaring said order of June 15, 1961, made by the Commission in so far as it purports to remand said Proceeding to the Hearing Examiner for the taking of additional evidence, to be invalid, unlawful and unenforceable.

(ii) Declaring that the said opinion and order of the Commission in said Proceeding issued June 15, 1961, determine that there is not sufficient evidence in the record of said Proceeding to justify the issuance of an order to cease and desist or of divestiture and that, accordingly, said opinion and order constitute a dismissal by the said Commission of the said Proceeding against Procter.

(iii) Ordering and requiring the Commission to perform the ministerial act of dismissing the complaint in said Proceeding pursuant to the Commission's finding that the record before it did not sustain the complaint.

(iv) That temporary and permanent injunction issue enjoining the defendants and each of them, and their successors in office, from taking any further action in said Proceeding pursuant to said order of remand dated June

15, 1961, and that the defendants and each of them and their successors in office, be enjoined from ordering any further hearings of any kind in said Proceeding.

(v) That the defendants and each of them, and their successors in office, be enjoined from relitigating the issues which have already been disposed of by the Commission's opinion of June 15, 1961.

(vi) That the defendants and each of them, and their successors in office, be temporarily, *pendente lite*, and permanently enjoined from taking any further action of any kind in said Proceeding.

(vii) That plaintiff have such other and further relief as to the Court may appear to be just and proper.

ROYALL, KOEGEL, HARRIS & CASKEY,

By /s/ KENNETH C. ROYALL
KENNETH C. ROYALL
and

/s/ FREDERICK W. P. LORENZEN
FREDERICK W. P. LORENZEN
Member of the Firm

Office and P. O. Address
1730 K Street, N. W.
Washington 6, D. C.

DINSMORE, SHOHL, BARRETT,
COATES & DEUPREE

By /s/ RICHARD W. BARRETT
RICHARD W. BARRETT
Member of the Firm

Office and P. O. Address
Union Central Bulding
Cincinnati 2, Ohio
Attorneys for Plaintiff

Motion for Preliminary Injunction

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3798-61

THE PROCTER & GAMBLE COMPANY, an Ohio corporation, having its principal office and place of business at 301 East Sixth Street, Cincinnati, Ohio,

Plaintiff,

v.

FEDERAL TRADE COMMISSION; PAUL RAND DIXON, SIGURD ANDERSON, WILLIAM C. KERN, PHILIP ELMAN, EVERETTE MacINTYRE, individually and as Commissioners of the Federal Trade Commission; and EVERETT F. HAYCRAFT, individually and as Hearing Examiner of the Federal Trade Commission, Pennsylvania Avenue at 6th Street, N. W., Washington, D. C.,

Defendants.

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, by its attorneys, on the complaint and affidavit of Dean P. Fite, verified on November 22, 1961 and all filed herein, moves this Court to issue a preliminary injunction *pendente lite* enjoining the defendants and each of them, their successors in office and their employees and attorneys, until further order of the Court, from taking any action in a Proceeding pending before the defendant Federal Trade Commission, entitled "In the Matter of The Procter & Gamble Company, a corporation, Docket No. 6901" (hereinafter referred to as "said Proceeding"), from ordering or holding any further hearings of any kind in said Proceeding, from taking any action pursuant to a

certain order of remand entered in said Proceeding on June 15, 1961, and pursuant to an order made in said Proceeding by defendant Everett F. Haycraft dated November 6, 1961, and from taking any other acts or steps in said Proceeding except entering an order dismissing the complaint herein.

Yours, etc.

ROYALL, KOEGEL, HARRIS & CASKEY

By KENNETH C. ROYALL
KENNETH C. ROYALL

/s/ FREDERICK W. P. LORENZEN
FREDERICK W. P. LORENZEN
Members of the Firm

Office and P.O. Address
1730 K Street, N.W.
Washington 6, D.C.

DINSMORE, SHOHL, BARRETT, COATES & DEUPREE

By RICHARD W. BARRETT
RICHARD W. BARRETT
Member of the Firm

Office and P.O. Address
Union Central Building
Cincinnati 2, Ohio
Attorneys for Plaintiff

November 24, 1961

NOTICE

To: Federal Trade Commission, Paul Rand Dixon, Sigurd Anderson, William C. Kern, Philip Elman, Everette MacIntyre and Everett F. Haycraft

PLEASE TAKE NOTICE that the points and authorities to be submitted in support of the foregoing

motion are enclosed herewith. The rules of the above-entitled Court requires that if you oppose the granting of the above motion, you or your counsel shall within five days from the date of service of a copy of this motion upon you, or such further time as the said Court may grant, or, as the parties to this suit may agree upon, file in reply with the Clerk of said Court, a statement of the points and authorities upon which you reply, and serve a copy thereof upon counsel for the moving plaintiff.

ROYALL, KOEGEL, HARRIS & CASKEY

By KENNETH C. ROYALL
KENNETH C. ROYALL

and

/s/ FREDERICK W. P. LORENZEN
FREDERICK W. P. LORENZEN
Members of the Firm

Office and P.O. Address
1730 K Street, N.W.
Washington 6, D.C.

DINSMORE, SHOHL, BARRETT, COATES & DEUPREE

By RICHARD W. BARRETT
RICHARD W. BARRETT
Member of the Firm

Office and P.O. Address
Union Central Building
Cincinnati 2, Ohio
Attorneys for Plaintiff

November 24, 1961.

Affidavit

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3798-61

THE PROCTER & GAMBLE COMPANY, an Ohio corporation, having its principal office and place of business at 301 East Sixth Street, Cincinnati, Ohio,

Plaintiff,

v.

FEDERAL TRADE COMMISSION; PAUL RAND DIXON, SIGURD ANDERSON, WILLIAM C. KERN, PHILIP ELMAN, EVERETTE MacINTYRE, individually and as Commissioners of the Federal Trade Commission; and EVERETT F. HAYCRAFT, individually and as Hearing Examiner of the Federal Trade Commission, Pennsylvania Avenue at 6th Street, N. W., Washington, D. C.,

Defendants.

COUNTY OF HAMILTON
STATE OF OHIO } ss.:

AFFIDAVIT

DEAN P. FITE, being duly sworn, deposes and says:

1. I reside at 7220 Winding Way, Cincinnati, Ohio. I am Vice-President—Corporate Affairs of plaintiff, The Procter & Gamble Company (hereinafter referred to as "Procter").

2. I attended hearings held in said Proceeding in Cincinnati, Ohio.

3. The preparations in connection with said Proceeding were handled by departments of the Company now under my general supervision and the individuals responsible for the preparation of said Proceeding report directly to me.

4. I am generally familiar with the matters alleged in the complaint herein and hereby state that, to the best of my knowledge, the factual allegations in such complaint are true.

5. With reference to the allegations in the complaint concerning irreparable injury if the present order of remand is not enjoined, I believe that the consequences alleged therein are true. I believe that the business of Procter will be disrupted in the manner alleged in the complaint if said Proceeding were to continue and it again became necessary to produce witnesses, to prepare statistical evidence, studies and surveys, to obtain market data information, to prepare for cross-examination, to consult economic experts and otherwise prepare for trial.

6. Illustrative of this disruption, during the course of the Proceeding, Mr. H. J. Morgens, Procter's President, was called to the witness stand on four separate occasions and spent a total of about three and a half days on the witness stand. This was in addition to the time necessary to acquaint himself with various details of company operation in preparation for his testimony. Similarly, Mr. B. F. Trimpe, Vice-President—Sales of Clorox, appeared on the witness stand on April 16 and 17, November 19, 20 and 26, 1958 and January 9, 1959. Some of the other key officials of Procter and Clorox who appeared, together with their titles and the dates on which they testified, are as follows: Mr. F. A. Brown,

General Manager of The Clorox Company on April 14, 1958; Mr. William Towers, Vice-President & Treasurer of The Clorox Company on April 14 and November 24, 1958; Mr. Neil Shaver, Advertising Manager of The Clorox Company, April 16 and 17, 1958; Mr. E. A. Snow, Procter's Vice-President—Advertising on July 7, 1958; and Mr. V. L. Montgomery, Vice-President—Manufacturing of The Clorox Company on November 17, 1958.

Unless the present order of remand is enjoined, the services of these same officers, or others holding positions of the same importance, will be required in future proceedings, thereby contributing to further disruption of Procter's business.

7. Furthermore, I believe that the uncertainties in the future conduct of Procter's activities in the liquid bleach industry, necessarily inherent in a continuation of said Proceedings, will result in detrimental consequences to Procter as alleged in the complaint. The uncertainty as to the future of Procter in the liquid bleach industry makes requisite long range planning almost impossible. The continued pendency of said Proceedings undermines the confidence of the employees of the acquired business and adversely affects Procter's relations with the public and with its customers.

8. Unless further proceedings in this matter are immediately enjoined, Procter will sustain irreparable injury for no part of which will it be able to obtain from any source even partial compensation.

9. The fact that defendant, Everett F. Haycraft, acting pursuant to the directive of the Federal Trade Commission, has set down said Proceedings for new hearings commencing November 30, 1961 requires that a temporary

restraining order and preliminary injunction issue. Otherwise, all of the harm and injury consequent upon the reopening of the evidence in this case would befall Procter even though the ultimate decision in this matter is in plaintiff's favor. All of the preparation, expense, adverse publicity and uncertainty in the business of Procter, referred to in the complaint hereinabove, would occur when new hearings are in fact held, irrespective of the ultimate outcome of such hearings. On the other hand, there is no indication that the defendants or Commission's Counsel will be harmed by loss of any evidence or in any other way if a temporary restraining order and preliminary injunction, as requested, be granted during the pendency of this litigation.

10. I am advised by the attorneys for Procter and I believe that the reopening of said Proceeding by the defendants, without the request of any party to said Proceeding and after the testimony has been closed and all Proceedings have been closed, results in undue harassment of Procter in violation of the statutes and rules relied upon in the complaint.

11. No prior application for the relief sought herein has been made to this or any other court.

/s/ DEAN P. FITE

Sworn to before me this 22nd day of November, 1961.

/s/ ROBERT J. WATKINS
Notary Public

My commission expires May 17, 1962.

[SEAL]

Motion for Temporary Restraining Order

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3798-61

THE PROCTER & GAMBLE COMPANY, an Ohio corporation, having its principal office and place of business at 301 East Sixth Street, Cincinnati, Ohio,

Plaintiff,

v.

FEDERAL TRADE COMMISSION; PAUL RAND DIXON, SIGURD ANDERSON, WILLIAM C. KERN, PHILIP ELMAN, EVERETTE MacINTYRE, individually and as Commissioners of the Federal Trade Commission; and EVERETT F. HAYCRAFT, individually and as Hearing Examiner of the Federal Trade Commission, Pennsylvania Avenue at 6th Street, N. W., Washington, D. C.,

Defendants.

MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff, by its attorneys, on the complaint and affidavit of Dean P. Fite, verified on November 22, 1961, and all filed herein, moves this Court to issue a temporary restraining order enjoining the defendants and each of them, their successors in office and their employees and attorneys, until further order of the Court, from taking any action in a proceeding pending before the defendant Federal Trade Commission, entitled "In the Matter of The Procter & Gamble Company, a corporation, Docket No. 6901"

(hereinafter referred to as "said Proceeding"), from ordering or holding any further hearings of any kind in said Proceeding, from taking any action pursuant to a certain order of remand entered in said Proceeding on June 15, 1961 and pursuant to an order made in said Proceeding by defendant Everett F. Haycraft dated November 6, 1961, and from taking any other acts or steps in said Proceeding except entering an order dismissing the complaint herein.

Yours, etc.

ROYALL, KOEGEL, HARRIS & CASKEY

By KENNETH C. ROYALL
KENNETH C. ROYALL

and

/s/ FREDERICK W. P. LORENZEN
FREDERICK W. P. LORENZEN
Members of the Firm

Office and P.O. Address
1730 K Street, N.W.
Washington 6, D.C.

DINSMORE, SHOHL, BARRETT, COATES & DEUPREE

By /s/ RICHARD W. BARRETT
RICHARD W. BARRETT
Member of the Firm

Office and P.O. Address
Union Central Building
Cincinnati 2, Ohio
Attorneys for Plaintiff

November 24, 1961

Order

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3798-61

THE PROCTER & GAMBLE COMPANY, an Ohio corporation, having its principal office and place of business at 301 East Sixth Street, Cincinnati, Ohio,

Plaintiff,

v.

FEDERAL TRADE COMMISSION; PAUL RAND DIXON, SIGURD ANDERSON, WILLIAM C. KERN, PHILIP ELMAN, EVERETTE MacINTYRE, individually and as Commissioners of the Federal Trade Commission; and EVERETT F. HAYCRAFT, individually and as Hearing Examiner of the Federal Trade Commission, Pennsylvania Avenue at 6th Street, N. W., Washington, D. C.,

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ORDER

Plaintiff's Motion for Temporary Restraining Order, coming on to be heard, and counsel representing all the defendants having stated that the only evidence which will be offered on behalf of the Federal Trade Commission in the proceeding before that Commission bearing Docket No. 6901 will consist (except to the extent necessary in rebuttal to any evidence hereafter introduced by plaintiff) of documentary evidence all of which has been shown to plaintiff's counsel today, and a witness to authenticate such documents; and further having stated that the introduction of such evidence will not consume more than two hearing days, December 1, 1961, and December 4, 1961.

Praecipe

Wherefore, it is, on this 30th day of November, 1961, ORDERED that the Motion for Temporary Restraining Order is denied without prejudice.

/s/ JOSEPH C. McGARRAGHY
United States District Judge

PRAECIPE

(Filed April 5, 1962)
HARRY M. HULL, *Clerk*

Civil Action No. 3798-61

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

the 5th day of April, 1962

THE PROCTER & GAMBLE COMPANY,
Plaintiff,

v.

FEDERAL TRADE COMMISSION, et al.,
Defendants.

The Clerk of said Court will please take notice that the plaintiff voluntarily discontinues the above-entitled action and voluntarily dismisses the complaint without prejudice.

ROYALL, KOEGEL, HARRIS & CASKEY

By /s/ FREDERICK W. P. LORENZEN
FREDERICK W. P. LORENZEN
1730 K Street, N.W.,
Washington 6, D. C.
Attorney for plaintiff

Transcript of Proceedings

(Tr. p. 1)

BEFORE THE
FEDERAL TRADE COMMISSION

In the Matter of

THE PROCTER & GAMBLE COMPANY, a corporation.

Docket No. 6901

Courtroom No. 1,
Room 805,
United States Post Office and
Courthouse,
Cincinnati, Ohio

December 16, 1957

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

APPEARANCES:

WILLIAM R. TINCHER; Attorney for the Federal Trade Commission, and

THOMAS A. DEVENY, III; Attorney for the Federal Trade Commission.

JOSEPH C. DINSMORE, Attorney for the Respondent; of the firm of Dinsmore, Shohl, Dinsmore and Todd, 12th Floor, Union Central Building, Cincinnati, Ohio, and

RICHARD W. TODD, Attorney for the Respondent; of the firm of Dinsmore, Shohl, Dinsmore and Todd, 12th Floor, Union Central Building, Cincinnati, Ohio, and

(Tr. p. 2)

KENNETH C. ROYALL, Attorney for the Respondent; of the firm of Dwight, Royall, Harris, Koegel and Caskey, 100 Broadway, New York City, and

ROBERT D. LARSEN, Attorney for the Respondent; 500 Wire Building, 1000 Vermont Avenue, N.W., Washington, D. C.

(Tr. p. 3)

PROCEEDINGS

Hearing Examiner Haycraft: This is the initial hearing in Docket No. 6901, Federal Trade Commission proceeding re Procter & Gamble Corporation, convening in Room 805 in U. S. Courthouse, Cincinnati, Ohio, at 10:00 o'clock a.m., on the 16th day of December 1957, before Everett F. Haycraft, duly appointed and qualified Hearing Examiner for the Federal Trade Commission.

* * * * *

(Tr. p. 9)

Hearing Examiner Haycraft: Well there is one point

(Tr. p. 10)

that I would like to have cleared up, I think perhaps in the beginning. Referring now to the body of the motion to limit or quash, I notice with respect to the documents described in the subpoena, in Paragraphs 1 and 2, 3, and 3-A, 4, 5, the first five paragraphs of the detailed part of the descriptive matter in the subpoena, that the point is made that anything back of 1956, any documents back of 1956, would be irrelevant and immaterial to this proceeding.

What do you have to say to that, Mr. Tincher?

Mr. Tincher: Well, Mr. Examiner, I believe in Section 7 proceedings it is essential for all purposes to have a more or less a "before and after" look at the situation, in order to see what the structure of the market, and of the ac-

quired and the acquirer was, prior to the acquisition, and if possible, to have a look after the acquisition.

* * * * *

(Tr. p. 13)

Mr. Tincher: Mr. Examiner, for the reason that this

(Tr. p. 14)

acquisition involved in this case is what the Commission started calling and I guess we lawyers have adopted the word, of a conglomerate acquisition, there has been no displacement horizontally of competitors of the same product.

* * * * *

(Tr. p. 33)

Mr. Royall: Well, your Honor, we are trying here only the Clorox merger.

Hearing Examiner Haycraft: Yes, but as I understand it, it is a unique proceeding. There has never been one like it before, Mr. Royall.

Mr. Royall: Yes, but——

Hearing Examiner Haycraft: It is a conglomerate. I don't know what the Courts are going to do with this thing; I don't know what the Commission, when they get all the facts, is going to do; I don't know what I am going to do—but I want the facts. I have to have the facts before I can determine whether or not it is a conglomerate acquisition; whether or not I believe it is that type of acquisition Congress had in mind when they passed this amendment to the Act.

* * * * *

(Tr. p. 69)

Howard Joseph Morgens,

was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Howard Joseph Morgens—Direct

Hearing Examiner Haycraft: What is your full name, please?

The Witness: Howard Joseph Morgens.

* * * * *

DIRECT EXAMINATION

By Hearing Examiner Haycraft:

Q. Well, state your position, if you will please. A. President of Procter & Gamble Company.

Q. How long have you been president? A. Since October 1st, this past year.

* * * * *

(Tr. p. 70)

Q. 1957? A. 1957.

* * * * *

(Tr. p. 71)

Q. Which of those divisions handles The Clorox Company? A. The Clorox Company is a subsidiary company of Procter & Gamble Company, and the General Manager of The Clorox Company now reports directly to me.

Q. Did you have direct charge of the acquisition of The Clorox Company? A. I did, under the then President of the company, yes.

Q. Did you conduct the negotiations? A. Yes, sir, I did. With help, of course—attorneys, accountants.

* * * * *

(Tr. p. 85)

Hearing Examiner Haycraft:

* * * * *

I think it's fairly clear from my rulings that I'm not going to allow at this time, unless the Commission tells me to, detailed information as to expenditures as you've

listed them here under 13 in products other than the liquid bleaches. And, also, following that same ruling, your surveys, and so on in 14.

I don't believe that there is any probative value—again I may be wrong, and I may be overruled—but I don't believe there is any probative value in attempting to show, or making a showing as to the expenditure of money in advertising products which have no relation whatever to the field in which they are entering in this case, for the simple reason that the amount of money that may be used in promoting or advertising one product may vary, and probably does vary, depending upon the competitive situation of that product, which would be different than the products we have involved in this case.

* * * * *

(Tr. p. 91)

Courtroom No. 1, Room 805,
United States Post Office and
Courthouse,
Cincinnati, Ohio

December 17, 1957

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 217)

Courtroom No. 1, Room 805,
United States Post Office and
Courthouse,
Cincinnati, Ohio

December 18, 1957

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 219)

PROCEEDINGS

* * * * *

Mr. Tincher: Mr. Examiner, we have reserved Commission's Exhibits Number 1 and 2 for the annual statements of The Procter & Gamble Company for the years ending—the fiscal years ending in 1952, 1953, respectively. And here we

(Tr. p. 220)

have Commission's Exhibits for identification 3, 4, 5 and 6, which are respectively The Procter & Gamble annual statements for the fiscal years ending June 30, 1954, 1955, 1956 and 1957. And I would offer these four exhibits at this time.

* * * * *

(Tr. p. 222)

(The papers referred to, heretofore marked for identification Commission's Exhibits 3, 4, 5 and 6, were received in evidence.)

* * * * *

(Tr. p. 229)

Hearing Examiner Haycraft: All right, number 14.

Mr. Tincher: Is a stock list for the New York Stock Exchange of the Procter & Gamble Company, dated August 20, 1956. It is a bound document, paginated, with an indication of a letter plus a page number.

Hearing Examiner Haycraft: How many pages in the document?

Mr. Tincher: That is what I am trying to determine here, sir. It doesn't—it goes from Page 16,466 to 16—— and I beg your pardon, sir, but I will have to strike that. That same number is on every page. It is not paginated, as I had thought.

Hearing Examiner Haycraft: The reporter can page it and tell us about how many pages there are.

As I understand, this is a document that was prepared and published by the Department of Stock List, New York Stock Exchange, a prospectus of the Procter & Gamble Company at the time of its acquisition of the Duncan Hines Institute—no, of the Hines Park Foods, Inc., and the Duncan Hines

(Tr. p. 230)

Institute in 1956, August of 1956.

Is there any showing that the statements contained in this document were furnished by the respondent, Procter & Gamble Company?

Mr. Tincher: Well, as I understand, sir, the document was prepared by the Procter & Gamble Company.

(The document referred to was marked Commission's Exhibit No. 14 for identification.)

* * * * *

(Tr. p. 233)

Mr. Tincher: Commission's Exhibit Number 12, for identification, is a bound document which may be described as the report, upon examination, of the financial statements of the Clorox Chemical Co. for the fiscal year ended June 30, 1957, by Certified Public Accountants.

Commission's Exhibit Number 13, for identification, exactly the same description except for the period for the month ended July 31, 1957.

(The papers referred to were marked Commission's Exhibits 12 and 13 for identification.)

Mr. Tincher: I offer these documents at this time.

* * * * *

(Tr. p. 235)

Hearing Examiner Haycraft: Well, they will be received in evidence; Commission's Exhibits Number 12 and 13 as identified.

* * * * *

(Tr. p. 240)

Samuel Benedict

was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you state your full name, Mr. Benedict?

The Witness: Samuel Benedict.

Hearing Examiner Haycraft: And where do you live?

The Witness: In Woodlawn, Ohio.

(Tr. p. 241)

Hearing Examiner Haycraft: And what is your occupation?

The Witness: I am Secretary of The Procter & Gamble Company, and many of its subsidiaries.

Hearing Examiner Haycraft: All right, go ahead.

By Mr. Larsen:

Q. Mr. Benedict, I show you Commission's Exhibit 14 for identification entitled Department of Stock List, New York Stock Exchange. Do you recognize that document? A. Yes.

Q. Was that prepared by you, or under your supervision? A. That was prepared under my supervision.

It's an application for listing on the New York Stock Exchange.

* * * * *

Hearing Examiner Haycraft: I will receive in evidence at this time Commission's Exhibit No. 14 for identification.

* * * * *

Mr. Tincher: All right, sir. Mr. Examiner, at this

(Tr. p. 242)

time I'd like to offer Commission's Exhibit Number 17 for identification, which is a fiscal exhibit. It is a loose-leaf notebook with attached pages. It is divided into sections, paginated consecutively through the alphabet, Pages 1 to Page 94, plus a glossary and an index.

* * * * *

Hearing Examiner Haycraft: How is it described?

Mr. Tincher: Excuse me, sir. It's a Sales Manual, Toilet Goods Sales Department of The Procter & Gamble Company.

Hearing Examiner Haycraft: Does it have a date?

Mr. Tincher: Yes, sir, it does. June, 1957. It also has a stamped number, 0009.

* * * * *

(Tr. p. 243)

(The paper referred to, heretofore marked Commission's Exhibit 17 for identification, was received in evidence.)

* * * * *

(Tr. p. 244)

Mr. Tincher: Mr. Examiner, we offer Commission's Exhibit Number 18 for identification, the Sales Manager, Case Goods Sales Department, of The Procter & Gamble Company, dated June, 1955. It is my understanding that

this is the current volume in use, and it is a loose-leaf notebook, paginated pages 1 through 145, with an index following.

(The paper referred to was marked Commission's Exhibit 18 for identification.)

* * * * *

Mr. Larsen: No objection.

Hearing Examiner Haycraft: Commission's Exhibit 18 will be received in evidence.

* * * * *

(Tr. p. 252)

Mr. Tincher: All right, sir. Commission's Exhibit Number 21, for identification, is a permanently bound document entitled, "Chain, Supermarket, Retail Operation"; containing details on the attached sheets as well as illustrations of space on shelves, both proper and improper as designated therein.

And it is accompanied by a cover letter, which I do not believe is essential. I will offer it at this time and if either side objects, or if you object, sir, the covering letter is not particularly important to us.

* * * * *

(Tr. p. 253)

Hearing Examiner Haycraft: Then we will mark this the same way. The cover page—I mean, this separate sheet will be marked Commission's Exhibit Number 21-A, and the material inside will be marked Commission's Exhibit Number 21-B—and these seven pages, we will keep them fastened together.

Commission's Exhibits 21-A and 21-B will be received in evidence.

* * * * *

Proceedings

(Tr. p. 265)

Mr. Tincher: Commission's Exhibit Number 27, sir, is entitled AGREEMENT dated May 28, 1957, and at the end of said agreement is signed——

Excuse me just a second.

——this is a copy of the agreement, on page 15 thereof appears the signatures of officials of the Clorox Chemical Co. and The Procter & Gamble Company, and thereafter unpaginated is Exhibit A consisting of one page—no—Exhibit A consisting of sections which are lettered with Roman numerals I through XX, and Exhibit B.

* * * * *

(The paper referred to was marked Commission's Exhibit 27 for identification.)

* * * * *

(Tr. p. 266)

* * * * *

Hearing Examiner Haycraft: Commission's Exhibit 27 for identification will be received in evidence.

* * * * *

(Tr. p. 312)

Courtroom No. 1, Room 805,
United States Post Office and
Courthouse,
Cincinnati, Ohio
January 31, 1958

* * * * *

(Tr. p. 314)

PROCEEDINGS

* * * * *

(Tr. p. 333)

Mr. Tincher: And as Commission's Exhibit Number 84-A through F a one-piece folded document entitled THIS

IS A PROMOTION YOU CAN REALLY TIE IN WITH, dated 11/52, apparently having no identification number.

Hearing Examiner Haycraft: Does it have a commodity, a product?

Mr. Tincher: Yes, sir. Concerning Camay and Ivory Snow, having identification number, sir, of 3471-GP.

(The papers referred to were marked Commission's

(Tr. p. 334)

Exhibit No. 84-A through F for identification.)

* * * * *

(Tr. p. 349)

Mr. Tincher: Mr. Reporter, will you please mark as Commission's Exhibit 111-A through I for identification documents concerning a Presidential parade contest, dated August, 1956, Number 4270GP.

Hearing Examiner Haycraft: What commodities?

Mr. Tincher: Excuse, sir; Tide, Joy, Camay, Oxydol, Ivory Snow. That's all, I guess, sir.

(The documents referred to were marked Commission's Exhibits 111-A through I for identification.)

* * * * *

(Tr. p. 350)

(The documents referred to, heretofore marked for identification Commission's Exhibit 111-A through I, were received in evidence.)

* * * * *

(Tr. p. 353)

Mr. Royall: Your Honor, I want to make an objection

* * * * *

But I also, in addition to that, want to object to any of them prior to the one of 1957, on the further ground that

we are not trying what Clorox did before the merger, and they have no relevancy of any kind in this matter.

I would like to say this, your Honor: These are really not in answer to the subpoena, because these, as I

(Tr. p. 354)

understand it, are gross sales, and they asked for net sales. These were the best we could get for them by looking at other folks records.

We did that in an effort to not be captious about what we produced, and to be helpful wherever we could do so, but we do make—that does not affect our objection, your Honor. The production of them was an effort to supply the request of the subpoena, and doesn't alter the fact that we think that at the most only the one of 1957 is competent, and that as a starting point from which other questions may be presented.

Mr. Tincher: Well, Mr. Examiner, that would be fine; those last few words hold the key to it, though. "As a starting point." That would be fine if we were trying this in 1965, but we are trying it in 1958. If we start in 1957 there is nothing to go forward from.

Of course it is our basic contention, as you undoubtedly have read in our reply brief, that a "before and after" picture is required, and this, of course, is before. It is more specific than that, sir. I think you are entitled to it just in abstract. In this particular case we allege the Clorox Chemical Co., the size it was, was steadily pulling away from the rest of the bleach competitors, and we allege that P & G was a size, in merchandizing and promotion and all that sort of thing, far in excess of Clorox Chemical Co.,

(Tr. p. 355)

and multiplied that diversity tremendously.

For that reason we feel it is pertinent to know what was happening before.

* * * * *

(Tr. p. 374)

* * * * *

Mr. Tincher: As Commission's Exhibit 153-A through G, a document which should be stapled, concerning Comet Cleanser, dated January, 1956, number 252-X.

(Tr. p. 375)

(The document referred to was marked Commission's Exhibit 153-A through G for identification.)

* * * * *

(The document referred to, heretofore marked Commission's Exhibit 153-A through G for identification, was received in evidence.)

* * * * *

(Tr. p. 396)

* * * * *

Mr. Tincher: Commission's Exhibit 214-A through D is a promotional piece for the product Clorox——

* * * * *

Mr. Tincher: It's my understanding, sir, that this

(Tr. p. 397)

document concerns a promotion in the spring of 1957.

(The papers referred to were marked Commission's Exhibits 214-A, B, C and D for identification.)

Hearing Examiner Haycraft: The objections to this exhibit are overruled, and Commission's Exhibit 214-A through D for identification is received in evidence.

* * * * *

Proceedings

(Tr. p. 423)

* * * * *

Mr. Tincher: Commission's Exhibit Number 279-A through O is entitled WHITE SAVER SALE featuring Oxydol, Camay, Ivory Bar Soap, Joy, Spic and Span, dated July, 1957, number 4711-GP.

(The papers referred to were marked Commission's Exhibits 279-A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O for identification.)

* * * * *

(The papers referred to, heretofore marked for identification Commission's Exhibits 279-A, B, C, D, E, F, G, H, I, J, K, L, M, N and O, were received in evidence.)

* * * * *

(Tr. p. 439)

Courtroom No. 1, Room 805,
United States Post Office and
Courthouse.
Cincinnati, Ohio
February 3, 1958

Met, pursuant to adjournment, at 9:30 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 441)

PROCEEDINGS

* * * * *

(Tr. p. 448)

* * * * *

Mr. Tincher: Mr. Reporter, would you please mark as Commission's Exhibit 321 for identification a document

entitled BRANDS OF WASHING PRODUCTS USED IN URBAN AND RURAL HOMES, dated April 22, 1957, signed Market Research Department, number 57141, a paginated document containing 27 pages.

(The paper referred to was marked Commission's

(Tr. p. 449)

Exhibit 321 for identification.)

* * * * *

Mr. Tincher: As Commission's Exhibit Number 323 for identification a paginated document consisting of three pages, apparently a memorandum to M. P. Link, Jr., from E. A. Snow, subject matter Clorox Chemical Company, and I make the assumption.

(Tr. p. 450)

that is the heading of the memorandum. It's dated February 28, 1957, marked Confidential, signed on Page 3 by Mr. M. P. Link, Jr.

* * * * *

(Tr. p. 451)

* * * * *

Mr. Tincher: And as Commission's Exhibit Number 324 for identification a document stapled together consisting of four sheets which have been marked A, B, C and D, said document being clearly a memorandum from a T. M. Warrington to a Mr. E. A. Snow, the document is dated October 26, 1955, marked Confidential, and entitled, after a preliminary statement, BLEACH MARKET BACKGROUND, said memorandum apparently being a recommendation from the writer to the receiver concerning P. & G.'s entry into the liquid bleach market.

(Tr. p. 452)

Mr. Royall: Your Honor——

Hearing Examiner Haycraft: I take it these are—these memorandums were furnished you by the respondent. Is that right?

Mr. Tincher: Yes, sir, in answer to the subpoena.

Hearing Examiner Haycraft: Go ahead.

Mr. Royall: Your Honor, we request an accurate description and not his characterization of the document.

Hearing Examiner Haycraft: Well, there will be time enough for that when he offers it.

* * * * *

Mr. Tincher: And as Commission's Exhibit Number 325 for identification a copy of a document having a bound cover, on the bound cover appearing the information NIELSEN FOOD INDEX BI-MONTHLY REPORT TO THE CLOROX COMPANY ON HOUSEHOLD BLEACHES, August 1, 1957, said binder is a loose-leaf binder for documents contained therein which we have paginated with an automatic paginater consecutively from Page 1 through 116.

* * * * *

(Tr. p. 456)

* * * * *

Howard Joseph Morgens

resumed the stand and testified further as follows:

DIRECT EXAMINATION

By Mr. Tincher:

* * * * *

(Tr. p. 458)

* * * * *

Q. Now, Mr. Morgens, the subsidiary formed by The Procter & Gamble Company subsequent to the acquisition

of Clorox Chemical was known as The Clorox Company? A. Our subsidiary is known as The Clorox Company.

Q. And that subsidiary is a wholly owned subsidiary of P & G? A. That is correct.

Q. Mr. Morgens, who is the leading producer of soap and detergent products in the United States? A. If by leading you mean the largest producer, I think The Procter & Gamble Company is.

* * * * *

(Tr. p. 461)

* * * * *

Q. Now, the product Clorox, the liquid bleach, is also sold in

(Tr. p. 462A)

grocery stores and drug stores, is it not? A. The product Clorox is certainly sold in grocery stores. I don't think you would find it in very many drug stores.

Q. Excuse me. How about variety stores and department stores? A. I imagine you would find it in department stores. I am not sure about variety stores. It wouldn't be sold in very great quantity through any variety store.

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(Tr. p. 467)

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Q. Well, let's see. We have Nielsen surveys utilized by the P & G Company. I assume, then, that those Nielsen surveys deal with particular brands? A. They deal with brands, yes.

Q. And do they deal with types of detergents and soaps, for example heavy sudsing, heavy duty? A. By brands; you can break down, you can describe it by the different brands. We use Nielsen primarily in two broad

(Tr. p. 468)

categories. One is what we call household packaged soaps, and the other is toilet soaps, and those are the only two broad categories we think are significant.

Q. That was household packaged? A. Household packaged soaps, and toilet soaps.

Hearing Examiner Haycraft: What do you mean by packaged soaps?

The Witness: Any soap that is sold in a package as distinct from a toilet bar, like a cake of Camay or a cake of Lux Toilet Soap.

All of the laundry soaps and dishwashing soaps are usually sold in a carton, or a can, or a package.

Hearing Examiner Haycraft: Ivory Snow, for instance?

The Witness: Ivory Snow would be a package soap, yes, sir.

Toilet soaps are generally for personal use, face and hands and bath; packaged soaps are generally for household use.

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(Tr. p. 469)

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Q. Mr. Morgens, it is true, is it not, that the net worth, the net sales and the net profit of The Procter & Gamble Company has tripled since 1946, and if that is not true for all three categories, why of course you can so indicate. A. Let me take the first part of your question.

No, it is not true, in my judgment, that the net profits, at least, have tripled since—What year did you say?

Q. Since 1946. A. I thought that was the year.

As far as net worth in concerned, I really don't know the figures, I coudn't tell them to you. I could find out, of course.

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The Witness: Your Honor, I would like to elaborate on that question.

You have taken the year ending June 30, 1956. Your statement possibly could be true if you take that one year. That was a very abnormal year immediately at the end of the war,

(Tr. p. 470)

and I don't recall all the circumstances, but I am quite sure you would find that there were considerable shortages, there may have still been OPA regulations, and so on.

If you will take the following year, the year ending June 30, 1947, you will see that our business is up about one and a half times; and if you take a normal year, or an average of any year before World War II, you will find that our profits are up less than three times, since before the World War.

So, for your specific year you may be correct on a 300 per cent increase, but as a general statement, no, we have not tripled our profits since the end of World War II.

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(Tr. p. 477)

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By Mr. Tincher:

Q. Mr. Morgens, does The Procter & Gamble Company, or yourself, feel that there are any competitive products to household liquid bleach? A. We certainly do.

Q. And what are those products, sir? A. You mean competitive to our product?

Q. Competitive to the product Clorox. A. Well, there are about one hundred and—I guess there are over one hundred, there may be two hundred bleach companies

making household liquid bleach products. The leading one is Purex, Hilex——

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(Tr. p. 481)

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Q. Now, are there any other products competitive with Clorox, sir, other than the products of the designated number of liquid bleach manufacturers that you have named? A. There are powdered bleaches, which I would regard as competitive with Clorox.

Q. All right, sir. Anything else? A. Those are the only ones I am aware of.

Q. Now, for what reasons do you regard powdered bleaches as competitive with liquid bleaches? A. Because they compete with liquid bleaches for the same purpose.

Hearing Examiner Haycraft: What is the purpose?

The Witness: Bleaching clothes; disinfecting floors. There are a multitude of purposes for Clorox; disinfecting sinks, toilet bowls. The housewife uses it very broadly as a household disinfectant, as well as a product used for bleaching clothes in the washing process.

By Mr. Tincher:

Q. I take it, then, sir, when you state that they are

(Tr. p. 482)

competitive, you mean they are competitive for functional reasons, because of the functions performed by the two products? A. Yes, sir.

Q. You realize, of course, Mr. Morgens, that liquid bleach is only approximately 10 per cent of the sales volume —or, rather, dry bleach is only approximately 10 per cent of the sales volume of the liquid bleaches? A. I realize that. You were asking me to name competitors.

Q. Yes, sir, of course. Do you recognize——

Hearing Examiner Haycraft: Let me see if I see what you are leading up to here.

Is there an issue in this case, Mr. Tincher, and Mr. Royall, as to what constitutes the line of commerce involved, whether there is a difference between a liquid bleach market and a general bleach market?

Mr. Tincher: Well, now, that, sir, is exactly why I asked Mr. Morgens to explain what they meant by "practical" in their answer, because if it is the contention——

Hearing Examiner Haycraft: I don't think you should ask him that.

Mr. Tincher: I don't have to, now, sir. I went at it the long way, and found out. But if it is P & G's contention that dry bleach and liquid bleach are in the same line of commerce, I wanted to know, at this early date, rather than when

(Tr. p. 483)

in my rebuttal.

Hearing Examiner Haycraft: I am trying to clarify the issues a little here, if I can.

Mr. Royall: Your Honor, they have chosen the liquid bleach market as the market to try this case on. We have not proposed or suggested any alternative, but we have not admitted, and do not want to, until the facts are completely developed, whether or not it is a valid market.

Hearing Examiner Haycraft: All right, that's still an open question, then?

Mr. Royall: Well, sir, we haven't admitted it, and we have alleged no other market.

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By Mr. Tincher:

Q. Mr. Morgens, prior to its acquisition by P & G, you recognize that Clorox Chemical Co. was the largest pro-

ducer of household liquid bleaches, do you not, both in volume and in sales dollars? A. Correct.

Q. And did your surveys and researches indicate to you who was the second-largest producer? A. Purex.

Q. Did your surveys and researches and studies indicate to you any household liquid bleach producer which had over six per cent of that national market, with the exception of Clorox

(Tr. p. 484)

and Purex?

Mr. Royall: We object, your Honor.

Hearing Examiner Haycraft: Overruled.

A. I don't recall, really. There may have been one or two over six per cent; not much over, if that's helpful.

By Mr. Tincher:

Q. Does the Colgate-Palmolive-Peet Company manufacture and sell a household liquid bleach?

Mr. Royall: Objection. I don't know the materiality of that, at all, your Honor.

Hearing Examiner Haycraft: Well, I think it is general background for the market we are considering here. Objection overruled.

A. Colgate does not produce or market a liquid bleach.

By Mr. Tincher:

Q. And the same question, Mr. Morgens, with reference to Lever Bros.

Mr. Royall: Objection.

Hearing Examiner Haycraft: Overruled.

A. Not in this country.

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(Tr. p. 485)

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By Mr. Tincher:

Q. All right, now, Mr. Morgens, were there any assets or business of the Clorox Chemical Co. which was not acquired in the acquisition by P & G, as that acquisition was finally worked out? A. All of the assets were acquired in that exchange of stock for assets.

Q. And what was the effective date of the acquisition? A. August 1, 1957.

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Q. Have you made a computation of the value of the P & G stock which was exchanged for the Clorox stock? A. On the basis of the value of the P & G stock on the date on which the contract was signed—not the date on which the acquisition became effective—it was $30,300,000 worth of P & G stock.

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(Tr. p. 486)

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Q. Was the final acquisition accomplished by exchanging 8½ shares of Clorox stock for each 10 shares of P & G?

Hearing Examiner Haycraft: How many shares?

Mr. Tincher: The other way around, I mean 8½ of P & G.

Hearing Examiner Haycraft: Eight and a half of what?

Mr. Tincher: Eight and a half shares of P & G stock for ten shares of Clorox stock.

A. That is correct.

Pardon me, just a moment. I misspoke myself. There was not an exchange of stock. We exchanged stock for assets.

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(Tr. p. 487)

Q. What happened, then, sir, to the stock of Clorox Chemical Co. when P & G took over that company? A.

The Clorox Chemical Co. remained in existence. It exchanged its assets for Procter & Gamble stocks. The Clorox Chemical Co. ended up with its primary assets being Procter & Gamble stock, which it then distributed, as I recall, to its own shareholders when it went out of business.

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Q. Who are the officers of The Clorox Company now, sir? A. I am President of The Clorox Company; Fred Brown is Executive Vice-President of The Clorox Company; there are a number of Vice-Presidents. One is a man named Trimpe who is Vice-President in charge of Sales; one is a man named Matson, who is Vice-President in charge of Traffic; one is a man named Montgomery, who is Vice-President in charge of Production.

Q. Were these gentlemen all with The Procter & Gamble Company

(Tr. p. 488)

prior to the acquisition? A. No, none of them were except for myself and Mr. Fred Brown.

Q. How about Mr. Trimpe? A. Mr. Trimpe was with the old Clorox Chemical Co. as Vice-President in charge of Sales of that company. He is currently Vice-President in charge of Sales of The Clorox Company which is our subsidiary.

Q. Who handled the advertising promotions for The Clorox Company? A. The Advertising Manager, a man who was Advertising Manager for the old Clorox Chemical Co. He is now advertising Manager for The Clorox Company, our subsidiary, and he works with a San Francisco advertising agency, which is the same agency which the Clorox Chemical Co. used.

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(Tr. p. 489)

Q. I would like to refer you to Paragraph 10 of the complaint. A. Of the complaint or the answer?

Q. Of the complaint, sir.

You will notice there are listed various plants as being production points of the Clorox Chemical Co. prior to the acquisition. Paragraph 10 of your answer omits this. Let me ask you if there are any plants, or if there were any other plants for production utilized by Clorox Chemical Co. in addition to those listed there? A. No, there were not.

Q. Now, subsequent to the acquisition have there been any new production plants located? A. No, there have not.

Q. And are all of those plants being used at the present time as set forth in Paragraph 10? A. No, all of these plants are not being used.

Q. And which ones are not, sir? A. The one in Seattle, Washington is not being used because we did not acquire it. That was sold by the old Clorox Chemical Co. prior to our acquisition.

The one in Kansas City we are not using, and have not used since the acquisition.

The one in Boston we are not using, and have not used since the acquisition.

Q. The latter two in Boston and Kansas City were acquired by

(Tr. p. 490)

the company. Is that correct? A. That is correct.

Q. Will you tell us, sir, why they were not, or why they are not being used to produce liquid bleach? A. The one in Kansas——

There were a number of reasons and considerations, obviously, that went into arriving at a decision of that kind. In Kansas City we happened to have a vacant building on our present plant site, and we are in the process of moving the Clorox operation into that vacant building.

And Boston, the Boston plant was originally located by the Clorox Chemical Co. with a view of making sales into eastern Canada, which sales had not developed, and in looking at it we decided we should not continue the operation of that plant.

Those, as I recall, were the main considerations.

Q. Now, when you say Kansas City is being put in with one of P & G's plants, is that a plant for producing soaps and detergent products? A. It's being put in a building adjacent to and on the same property as the plant producing soap and detergents. The Clorox plant on that property, however, will be managed, when it is opened, by The Clorox Company, and the management of the plant, in other words, will head up to the San Francisco subsidiary, and not to the part of the business which runs the soap plant.

(Tr. p. 491)

Q. I see. Now, do I take it that the Boston production plant for the Clorox Chemical Co. was concerned only with sales in eastern Canada, or did they also sell domestically? A. It also sold domestically.

Q. Now, where is the liquid bleach coming from for the area of the United States which was formerly served by the Boston plant of Clorox Chemical Co.? A. It's coming from a plant in New Jersey, I believe. Certainly a good part of it is coming from the Jersey City plant.

Q. Do you have the United States allocated into sales areas, or regions, or by each production plant? A. We

have what you might call four Sales Divisions of The Clorox Company with a man in charge of Sales in each Division. Those Divisions pretty well cover the United States.

Q. And could you tell us, sir, what the—of course, this would just be approximate—but what the approximate geographical boundaries of these four Sales Divisions are? A. I'd have a difficult time telling you that. I'm not close enough to really describe those boundaries. One is east, I would assume, one is south, one is in the west, and one is on the Pacific Coast.

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(Tr. p. 492)

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Q. Mr. Morgens, returning to the general subject matter of Clorox liquid bleach, Clorox liquid bleach is about 94¾% water, is it not? By that, what I mean is that Clorox liquid bleach is a product commonly known as a 5¼% sodium hyperchloride solution? A. That is a correct statement. 5.25% hyperchlorite soludion, sodium hyperclorite solution.

Q. And that is true, is it not, of most of the household liquid bleaches? A. That's what their labels say.

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(Tr. p. 493)

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Q. Now, prior to the acquisition did the Clorox Chemical Co. produce any product other than Clorox liquid bleach? A. The answer is 99% no. It produced an industrial bleach as a very small part of its business and which it sold in Oakland, California. It did not sell beyond the Bay area, at least.

Q. And that was——

Howard Joseph Morgens—Direct

(Tr. p. 494)

A. For all practical purposes it had only one product, and that was Clorox household bleach.

Q. And this bleach that you speak of as being industrial, that was a 16% concentrate, was it not? A. I'm not familiar with the figure. It was a very small part of their business, and one which we weren't particularly interested in.

Q. Has that business been continued by The Clorox Company? A. I am not certain. I—There certainly is no desire to expand it.

And as I say, it was a very small part of their business.

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(Tr. p. 495)

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Q. But at least it has been determined, whether reduced to paper or not, that each production plant will sell, assuming the supply, inventory is normal, will sell within a certain geographical area surrounding that plant. A. Yes, we sell everywhere in the United States. There isn't anyone that wants to buy household bleach that we won't sell. When the sale is made there are a lot of factors that go into consideration as to what plant should ship to that particular customer at that particular time. And generally speaking it will be mostly from the same plant. But there are border areas——

(Tr. p. 496)

Hearing Examiner Haycraft: Who determines that?

The Witness: The Manager of Traffic.

Hearing Examiner Haycraft: In San Francisco?

The Witness: In San Francisco. And truckers' rates vary. Sometimes a trucker will have——the rates vary

from time to time. I can't give you any precise answer on that. I don't think there is a hard line on a map to look at, if that's what you mean.

By Mr. Tincher:

Q. Well, one of the most important considerations in deciding which production plant to use, sir, is the fact that the value of the product in relation to the freight costs is extremely low, is it not?

Mr. Royall: Objection. That calls for a rather long analysis. That is not a question of fact.

Hearing Examiner Haycraft: Overruled. The witness can answer.

A. Let me put it this way: The freight costs on Clorox bleach are high. You pay a lot for shipping glass and water. It's a heavy material, and it's a breakable material. The freight costs tend to be high as measured by other—I'll say they tend to be high in relation to the total cost of the product as compared to most other grocery or household products with which I am familiar.

By Mr. Tincher:

(Tr. p. 497).

Q. Yes, sir. And that is the basic reason, is it not, why the Clorox Company and the Clorox Chemical Co. as well had production plants scattered all over the United States rather than attempting to serve the United States from one or even two or three plants? A. That is the basic reason why any company that is going to sell probably over the United States needs more than one plant.

Q. Now, at the time of the acquisition by P & G, Clorox bleach was firmly established as a reputable and well-known product, was it not? A. Well, there are different ways to interpret "firmly established". If you mean

that it had a large sale at the time we acquired it to the public, the answer is yes.

Hearing Examiner Haycraft: I think it would mean, also, something about distribution.

The Witness: Yes. We had wide distribution on Clorox.

By Mr. Tincher:

Q. And it was known as a very well known product and very well received, was it not? A. Yes, I would say it was.

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(Tr. p. 498)

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Q. Mr. Morgens, at the time The P & G Company took over the assets of the Clorox Chemical Co. that company had a very substantial amount of retained cash earnings, did it not? A. It had a fairly substantial amount of retained cash earnings, yes.

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(Tr. p. 499)

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Hearing Examiner Haycraft: Was that your understanding of the phrase when the question was asked?

The Witness: I understood you to mean there was some cash in the Clorox Chemical Co. which we acquired which was over and above the cash required for the needs of the business.

Hearing Examiner Haycraft: Over and above the capital—Over and above the amount of the capital which they needed.

Mr. Tincher: Has your question been answered satisfactorily, sir?

Hearing Examiner Haycraft: Yes.

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Howard Joseph Morgens—Direct

(Tr. p. 500)

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By Mr. Tincher:

Q. Mr. Morgens, can you tell us approximately what percentage of the product Clorox is sold in grocery stores?

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(Tr. p. 501)

A. I can't tell you that out of any knowledge. We sell —The Clorox Company sells to distributors. The distributors sell to whomever wants to buy bleach from them.

Hearing Examiner Haycraft: You mean Clorox doesn't sell direct to the retail trade?

The Witness: No, it does not.

By Mr. Tincher:

Q. And what type of distributors are these, sir? A. I don't know quite what you mean.

Hearing Examiner Haycraft: Jobbers? Wholesalers?

The Witness: No, they are——

Hearing Examiner Haycraft: Brokers?

The Witness: You might call them equivalent to a food broker in another field, but they act as principal for us. We sell them the Clorox. We bill them for it. They own it. And they then, in turn, sell it to jobbers, to retailers.

By Mr. Tincher:

Q. My point being——

Hearing Examiner Haycraft: Chain store retailers?

The Witness: I mean even chain store retailers. The Clorox Company only sells to distributors who act as principal, and they in turn distribute the merchandise to chains, independent retailers, jobbers, whatever, whoever wants to buy the product, whoever they can persuade to buy it.

Hearing Examiner Haycraft: Then does The Clorox

(Tr. p. 502)

Company distribute direct from the factory to the customers of these distributors?

The Witness: They do both. Most of the merchandise moves direct on the order of the principal, or what we call the distributor.

Hearing Examiner Haycraft: Go ahead, Mr. Tincher.

By Mr. Tincher:

Q. These distributors, there are approximately 80 in number, are there not, sir? A. Approximately. I think there are a few more than that.

Q. And they are basically what is known as food distributors. Is that not true? Or food brokers?

Hearing Examiner Haycraft: They can't be a broker.

A. They are a distributor of products which move through grocery stores in the main, sir.

Q. In the main. A. Yes.

Q. Now, Mr. Morgens, is it not correct that most of the grocery store products sold by The Procter & Gamble Company, including Clorox, are known as low cost and many repeat items? In other words, they are sold for low cost, and they are items that are used over and over again during the period of a year by the housewife? A. That would be a characteristic of most of our household products. We make other products than what we call household

(Tr. p. 503)

products.

Q. Right. I'm limiting myself to grocery store products.

Hearing Examiner Haycraft: Now, is the term "household products" and "grocery store products" synonymous? Is that true of all your grocery store products?

The Witness: No, sir. There are household products that would move through drug stores. By household products I mean products which are used in the home rather than used by industry.

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By Mr. Tincher:

Q. Now, Mr. Morgens, P & G's basic competitive objective with Clorox, as with other products, is to retain customers already using those products, and to cause customers not using the product to switch to the product. Isn't that correct? A. Our basic objective is to sell Clorox, and the technique of how you do that is very difficult to describe. For example, I believe this is true of Clorol. I know it is true of our other household products. There is no such thing as what you call a steady customer. We haven't found—there must be some, but we don't find them in our surveys. The housewife is constantly shifting from one product to another. So I can't answer your question yes or no.

(Tr. p. 504)

By Mr. Tincher:

Q. And she will shift, will she, sir, to wherever she can get the best deal? A. She will shift in accordance with her own desires of what she wants to do, and sometimes it is price and sometimes it is quality, and sometimes it is impulse purchase. There's just a whole group of reasons for her shifting.

Hearing Examiner Haycraft: What will she shift from in buying Clorox? In other words, where would she go, what other products would she find on the shelf in the grocery store that would take the place of Clorox?

The Witness: I don't know of any grocery store, your Honor, that doesn't have many different household

bleaches on the shelves, some selling at a lower price, some selling at a higher price. There is a whole—It is so easy for her to shift, it is readily understandable why she does shift so often.

Hearing Examiner Haycraft: Well, you say often, how would—if that's true, how would Clorox maintain its position, then, in the industry?

The Witness: Clorox sells the quantity that it does because most often the housewife reaches for the bleach with the Clorox label on it, rather than a bleach with some other label on it, and the art of manufacturing and selling a product is to manufacture the quality of the product and to

(Tr. p. 505)

persuade the woman that that is the quality she wants most often. But there is what we call an ever-changing customer, she's constantly trying other products. And she comes back to Clorox most often, and that's the reason why it sells in greater quantity than its next competitor when you consider the country as a whole.

Hearing Examiner Haycraft: Go ahead, Mr. Tincher.

By Mr. Tincher:

Q. I believe you listed more or less two criteria there, sir: it has to be quality, and the housewife has to know about it. Do I do justice to what you say, in the way of summary? A. It is very easy to oversimplify these reactions of a housewife, and what causes her to buy. It is in the realm of psychology, and I don't think anyone fully understands it, including ourselves; but certainly quality of the product, and calling attention of the housewife to that quality, are two important factors in that process.

Q. And the product with the best quality, say the undisputed best quality, will not move, and will not be accepted by the housewife unless it is promoted and advertised, will it? A. I would like to make two statements in response to that question.

Quality is the primary requirement. You can't sell

(Tr. p. 506)

anything without quality, no matter how well you advertise it.

Hearing Examiner Haycraft: That is, you can't maintain a sale over any long period.

The Witness: You can sell it once, but you can't get the housewife to come back to purchase it.

A. (Continued) So we rate quality of product as the Number One requirement in any successful sale.

Hearing Examiner Haycraft: Can you illustrate, from your experience, a commodity that has been highly advertised, and it didn't hold up, and it failed on the market?

The Witness: Yes, we certainly can.

I would like to say it is not only quality, but it is, as you might define it in a laboratory—but it is quality as the——

Hearing Examiner Haycraft: As the public——

The Witness: As the public thinks of it.

Hearing Examiner Haycraft: In other words, public acceptance is the real test, isn't it?

The Witness: That's the real test. The housewife has her own ideas of quality and a good deal of the problem is to determine what she wants, and how she uses that product, and how she determines and measures quality in her own mind.

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Howard Joseph Morgens—Direct

(Tr. p. 508)

By Mr. Tincher:

Q. Mr. Morgens, the Procter & Gamble Company prides itself, and has for many years, on the quality of its products, does it not? A. We certainly do.

Q. And the same can be said for its new product Clorox, can it not, that it is a quality product? A. We believe that it is a quality product.

Q. And your surveys and investigations prior to the acquisition shows that Clorox was recognized and accepted as a quality product, did it not?

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A. We believe the public has a high opinion of Clorox, based on the quality that they have received over the years.

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(Tr. p. 509)

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The Witness: Well, it is also the fact that I think there is a concept in your mind, Mr. Tincher, that we have people who are steady customers of Clorox and only Clorox.

Hearing Examiner Haycraft: Well, I think that is a fair assumption. What is wrong with it?

The Witness: Well, I was trying to explain, we don't believe that. We don't know enough about Clorox, because we haven't had enough time.

Hearing Examiner Haycraft: That is possible. It may be.

The Witness: But I will say, if you draw your analogy from other parts of our products, a good customer of one of our other products would be one who uses it, say, 60 per cent of the time. If that is what you mean by a customer. The other times she's sampling other products.

Hearing Examiner Haycraft: Well, she will sample, then, of course. Now, we are getting into another field entirely, and I don't want to spend too much time on it. I

(Tr. p. 510)

don't know how much Mr. Tincher wanted to go into it. But one time she will probably sample another product, and that's when she can't find Clorox on the shelf?

The Witness: That's right, and that frequently happens.

Hearing Examiner Haycraft: Another factor is that Clorox is away out of line in price, might be. I can't see much of any other reason.

The Witness: Well, as I say, I don't know all the reasons in a housewife's mind, but sometimes she's just contrary and wants to try something different. She sees another brand and would like to try it, and she does that all the time, for one reason or another, that seem like good reasons to her; and that's as far as I can take it.

Hearing Examiner Haycraft: I just went through the trial of another industry, and of course you can't compare industries, I suppose, except you have the same housewives.

The Witness: Well, I bring this up: I think we may be off on a theoretical discussion which I don't want to pursue any further than you would like to, but you have asked twice now the question, Is one of our objectives to hold our customers? Well, we never have a complete hold on a customer.

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(Tr. p. 511)

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Q. What method is employed by P & G to determine if products are getting what the P & G Company thinks is an

(Tr. p. 512)

appropriate amount of shelf space?

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The Witness: Well, the job of a salesman is, in part, to see that the products he sells get what you call an appropriate amount of shelf space.

Hearing Examiner Haycraft: In the retail store?

The Witness: In the retail store.

By and large the company's measure, in checking up on salesmen to see if they are doing the proper job, is to see if we—is to measure the performance, let's say, in relation to an objective, and the objective is to have our products have shelf space in proportion to the way those products move out of that particular outlet.

By Mr. Tincher:

Q. And how do you know how they move out of the outlet, sir? Your own products, of course it is obvious, but your competitors'

(Tr. p. 513)

products are considered also. A. Well, the retail buyer, retail store, will frequently make such figures available, and frequently will not, I might say, and that's why it is very difficult to check up. But, insofar as we can make a judgment as to how the products move relative to one another, we try to get our share of that shelf space in terms, in relation to movement of those products to the public.

Q. And in that connection the salesmen are supplied, and their sales organizers, with various promotional pieces which show the percent of the market that the P & G product enjoys, in order that they can show that to retailers and try to convince them of how much shelf space P & G should have, are they not? A. Oh, I wouldn't be

surprised, but I don't know. I haven't seen that kind of information.

I would like to say that in aiming for our share of the available shelf space we set that as our goal, but the goal is practically never reached. It is just how far a given salesman advances toward that goal that we measure his performance relative to how far another salesman advances toward that goal.

Hearing Examiner Haycraft: Do you find, on the part of the retail dealers, a resistance to the use of shelf space if the product is not moving?

(Tr. p. 514)

The Witness: Yes, yes, that's correct; but a small-moving brand, your Honor, always has more shelf space than its movement deserves. That's almost an axiom of the business; just because, in order to have any representation at all on the shelf it needs, it usually needs more than is justified. A chain store, for example, will not keep an unopened case of merchandise in the back room, because—well, because of thievery, and the difficulty of keeping track of the merchandise. So it puts a whole case of a slow-moving brand on a shelf and it puts a whole case of some other brand that moves much more rapidly, on the shelf. That is the tendency. In order to make room for all of the brands which some housewives might want, the slow-moving brands usually have a disproportionate share of the available shelf space.

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(Tr. p. 518-B)

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Q. Mr. Morgens, in reality when you consider the grocery trade business as it exists today, in reality what P & G and other soap manufacturers, Clorox and other bleach

manufacturers are competing for is shelf space, is it not? A. That's one of the things that they compete for, yes.

Q. And if they don't have the adequate, or even the appropriate amount of shelf space in relation to their sales, it's a competitive disadvantage to them. A. That is correct.

Q. Isn't it, also, a fact, Mr. Morgens, that many grocery stores, especially the larger super markets and chains, today are handling many more thousands of products than they used to in the past, and that's one reason why shelf space is such a problem? A. They're handling more products than they used to in the past. I don't know whether you can measure it in thousands or not.

Q. And this is a factor, also, is it not, sir, that makes it

(Tr. p. 519)

more difficult for a brand new product to break in? A. That's one of the factors that make it difficult for a brand new product to get shelf space.

Q. And is this not one of the basic reasons when P & G breaks in a new product it doesn't just put it on grocery shelves, or try to, but the introduction is accompanied by either a large advertising campaign and the grocers are notified of the advertising campaign will be forthcoming?

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A. I would like to say one of the reasons we notify or inform our salesmen an advertising campaign is forthcoming, but we don't run advertising or promotion to get distribution. We run that type of activity to sell to the consumer. That's our basic reason for it.

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(Tr. p. 522)

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By Mr. Tincher:

Q. All right, sir. Now, returning to the shelf space topic, it is true, is it not, Mr. Morgens, that even within a given section of shelf space, say the space reserved for soaps and detergents, that even within that area there are shelves that are more desirable and produce better selling results than other shelves within that same area? A. There are.

Q. And one of the objectives of P & G is to obtain that type of shelf space, as well as an appropriate amount of shelf space. A. We would like to obtain the best shelf space in the world for our products, obviously.

Q. And once again, the contention of P & G is that most desirable type of shelf space should go to the products having the appropriate volume. A. I understand that is determined by the trade, not by us.

Q. That is right. A. And there are a lot of different ideas about what is the most desirable shelf space, a lot of different opinions within a company such as ours about what is the most desirable shelf space. Eye level position is considered one, except the eye level shelves frequently don't hold enough merchandise, and if you try to put a product like Tide on the eye level shelf you would soon run out of your product, you would run out every few

(Tr. p. 523)

minutes. So we don't go after that.

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Q. As a matter of fact the shortage of inventory of Clorox was one thing that P & G had brought to its attention by various sources prior to buying the Clorox Chemical Co., is that not correct? A. We were aware of the shortage of available supplies on grocery store shelves,

yes, of Clorox. We are quite familiar with that problem because we face it on our own products.

Q. And that's a problem that The P & G Company will attempt to correct with Clorox, will it not? A. We constantly attempt to correct it, not only for Clorox but for all of our other products. We never, as I say, quite succeed.

Q. And that is another reason for obtaining a sufficient amount of shelf space, is it not, because it is much better to have the product; if you're going to sell the grocer, for example, two cases, isn't it better for him to have both cases on the shelf than one case on the shelf and one case back in his

(Tr. p. 524)

stockroom? A. It's desirable from our company's standpoint, we think from the trade standpoint, and we think from the consumer's standpoint to have merchandise on the shelf in relation to the public acceptance . . . I'll use your Honor's phrase . . . of that product. Otherwise you find bare shelves, the product runs out, the stockboys never quite keep up with the demand, and you lose a lot of business, and the consumer loses in the sense that she doesn't find the product available that she wants to buy.

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(Tr. p. 529)

Q. Is there any single P & G product in the case goods department, and by the way would you explain for us on the record what the case goods department or division is, sir? A. Case goods merely refers to products which are sold in cases. In other words, household products as distinct from industrial products.

Q. That would include the soaps, detergents, cleansers, shortenings? A. We speak now, really, of case soap

products, or case food products rather than just case goods. But put them all together and they are called case goods.

Q. All right, sir. Is there any product in the case goods division or in the toilet goods division which is not advertised by P & G? A. Yes, there are products in the case soap division. As I say, I have to distinguish the case soap division, which are not advertised by Procter & Gamble.

Q. Are those products being sold nationally? A. Yes. Since every salesman is authorized to sell them——

Hearing Examiner Haycraft: What are those products? I thought you advertised everything.

The Witness: Not everything. Almost everything. In the case soap business we have—where I referred to the bar laundry soaps earlier in my testimony this morning.

Hearing Examiner Haycraft: You don't sell much of

(Tr. p. 530)

that?

The Witness: We don't sell much, but we don't advertise it.

Hearing Examiner Haycraft: There's not much of a market for that, is there?

The Witness: We sell a hard water soap called Kirk's Castile.

Hearing Examiner Haycraft: A hand soap.

The Witness: A hand soap. It is not advertised. But a major part of our case soap business is all advertised brands.

Hearing Examiner Haycraft: And I suppose it would follow that you advertise, naturally, where you have a market, naturally, where everybody, or every housewife all over the United States is a customer.

The Witness: Where there's a market, an opportunity.

Hearing Examiner Haycraft: And the reason you don't advertise, is where there's a limited market.

The Witness: Where there's a limited market, that's right.

(Tr. p. 581)

By Mr. Tincher:

Q. Can you tell us, Mr. Morgens, the total amount of money expended for advertising in the year 1957? And may I, for you, sir—I am not trying to be tricky about it—the complaint alleges $79,000,000. The answer admits at least that much was spent. I am asking you because I have reason to believe that the figure is larger. A. Well, I am not going to be tricky about it either, in my answer, but I will tell you the honest answer is that I just don't know, and I think that probably requires some explanation.

We never see an overall figure in the management of The Procter & Gamble Company. I haven't seen one in years.

I think—I don't think any other major executive knows that figure, or has occasion to run into it. We don't use it in the management of our business, in any way.

Proposals and recommendations for advertising expenditures are submitted by brands, and they are approved by brands. They have meaning only in relation to an individual brand. The total has absolutely no meaning at all to us except that it just happens to be the sum of the various parts, and it has no use. That's one reason why we don't use it in any way in the management of the company, and I don't happen to know it.

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(Tr. p. 534)

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Mr. Tincher: That is correct, sir; and may I say I have in my list of questions—I think it would be advisable to do it all here now, at once:

We would also like to have—and certainly we think it is a concrete manifestation of what P & G can do with a new product, we would like to have the amounts expended on advertising and promotions of the products Gleem, Crest, and Comet, since their introduction.

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(Tr. p. 535)

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Mr. Royall:

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(Tr. p. 536)

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We hope your Honor will not request this information, and in case of promotion that is particularly true. To give that information, with the knowledge that people generally have, competitors generally have, would enable an analysis

(Tr. p. 537)

of the methods of promotion, the results of it, and the way in which it is distributed between various brands.

I hope your Honor will not require the production of any of the information we have discussed, either generally or specifically, between promotion and advertising, and certainly not as to any specific product.

Mr. Tincher: Mr. Examiner, I would like to be heard briefly. In the first place, we have no knowledge on this record of what is required for a complete type of merchandising and promotional campaign in liquid bleach. We have absolutely nothing. We don't know. The fact that Clorox has, or had the money, and didn't do it, is well accepted, of course. But the fact that Clorox had some money didn't mean it could be used for advertising, any more than I can maintain because P & G, as the record

now shows, has several hundred millions of dollars of money stacked away in various places, doesn't mean that that several hundred million dollars can be used for advertising.

Hearing Examiner Haycraft: Why not?

Mr. Tincher: Because I think that anybody would agree that that is—anybody who is in business would agree that a certain sound financial basis has to be maintained, certain contingent funds have to be set aside, so—and certain reserve funds have to be set aside, certain provisions have to be made for taxes that might be in arrears or being

(Tr. p. 538)

contested. There are all kinds of possibilities, sir. It is just sound management, as I understand it, to have accumulated earnings, and to have reserves in the event of a recession, or something of that nature.

But, as I say, even if we could assume that all these vast reserves of either Clorox or P & G could be used for advertising, we have nothing on the record as to what it does cost. That's what we are trying to find out. We can look at Comet, Gleem, and Crest and find out what it costs; and my contention is that the cash assets possessed by Clorox Chemical Co. at the time of its dissolution will be minor and minute compared to the amounts expended on Comet, Crest, and Gleem.

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(Tr. p. 540)

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Hearing Examiner Haycraft: Of course there is pending an appeal from a motion on the quashing of the subpoena, but—and whatever action the Commission takes on appeal may have some bearing on future rulings. I am

going to follow along, however, the general theory that I have up to this time, until, or unless I am compelled to do otherwise, or unless I see further light.

I can see where the overall picture of the amount of money that Procter & Gamble was able to spend, and its policy of merchandising has seen fit to spend, generally, as an overall thing, would be relevant; and I think it would have some probative value.

As to the amount that was spent on any given item, new or old, while it might be relevant, in my judgment it would have no probative value, as I explained the last time we were here.

When Procter & Gamble goes into any industry or field, market, to sell its products, it is met with varying competitive conditions, and we can't assume that Procter & Gamble would necessarily have to spend the same amount of money, or any given amount of money, in order to sell Crest, for instance, or some other item, in another industry, other than the bleach industry.

(Tr. p. 541)

It not having been in the bleach industry before, you can't tell what the competitive situation is there, from their own records, from their own experience. We cannot, it seems to me, measure the amount of money that Procter & Gamble should be required to spend; or should spend, in the liquid bleach industry, by what it may have spent in a detergent industry, or some other industry.

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I don't think that we can determine conditions, what is necessary for Procter & Gamble to do in the liquid cleanser industry, by what they may have done in the other industry, because of the varying competitive conditions that may exist.

If I may illustrate that, suppose, for the sake of example, and there is some evidence along that line in the liquid bleach industry, the Clorox brand is a brand well known, whereas some of the other things that Procter & Gamble went into, the mix industry, for instance, which is a highly competitive industry, and the company they bought out there occupied a very small portion of the business relative to the two larger ones, and I would expect that Procter &

(Tr. p. 542)

Gamble would spend a lot more money in getting into that industry and getting shelf space in that industry, than it would in Clorox, which was an established brand with a very high reputation.

Mr. Royall: And that would be true in a new product entirely, too, your Honor.

Mr. Tincher: That is certainly true, sir.

Hearing Examiner Haycraft: For that very reason, Mr. Tincher, I just can't agree with your concept of the probative value of this type of comparison, because you do have this differing competitive background.

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Now, with that background, that explanation, and following my feeling up to the present time, I am going to ask the witness to accumulate an overall figure of what he spent, what the Company has spent on advertising in '56 and '57, and promotional, on all of its products; in other words,

(Tr. p. 543)

to see what that figure would bring out as to the ability of Procter & Gamble.

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(Tr. p. 547)

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EXAMINATION ON VOIR DIRE

By Mr. Royall:

Q. Mr. Morgens, will you explain to me the sales promotion system, in very general terms, of Procter & Gamble, and where, in general, the costs, if there are costs, are incurred, and in what categories, in general, they are? I don't want a very detailed statement of it. A. We use a lot of different types of promotion plans, as most every other manufacturer does.

The most typical plan with which we are associated, I suppose, are the so-much-off-on-the-purchase, say five cents off on one package when you buy another at the regular price, would be an example.

Another example would be——

Q. Well, let's take that example, if I may interrupt you. That has an effect on the realization you get, does it, from the sale? A. All of what is commonly referred to as sales promotion costs, end up in three places in our accounting system. One

(Tr. p. 548)

is the reduction of realization. I don't know if you are familiar with that term, but, in other words, the reduction of your sales figure.

Q. The amount you receive on sales? A. The amount we receive on sales, yes, the reduction of realization.

Or it shows up as a higher factory cost, or it shows up as a selling expense, a sales expense.

For example, when you sell a 10-cent package for five cents, that shows up in our books as a reduction in realization. When you bundle a package, a 10-cent package which

sells for five cents, with another which is sold at the regular price, the cost of that bundling at the factory, the extra cost, shows up in a higher factory cost.

Q. You mean the mechanical operation? A. The mechanical operation of putting the two packages together.

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(Tr. p. 552)

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CROSS-EXAMINATION ON VOIR DIRE

By Mr. Tincher:

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(Tr. p. 553)

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Q. The same question for the coupons. Do I understand correctly that the coupons are sent in to P&G in Cincinnati and P&G then sends checks to the dealers or broker, whoever sent in the coupon? A. That is right. And it is my understanding that is part of selling expense on our books.

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(Tr. p. 556)

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Q. How does that work, sir? You say it's all broken down to each product. How does that work when the premium or the couponing or the advertising involves two or maybe half a dozen of the P & G products rather than just one product? A. Well, I assure you it works. We break every cost down by a brand. In the first place, only I'd guess less than ten per cent—that's an estimate—of our plans, what you call promotion plans, I believe, as illustrated by that, involve more than two products, and when they do each product is standing on its own feet, and those two products negotiate with each other and bargain

with each other for the best possible result as far as they're concerned. They are not forced into it. It's up to them. It could be just a negotiation as if it were with another company as to whether or not we wanted to cooperate with them. And the plan as to what each brand pays in those joint promotions is clearly established by negotiation between those brands. And I might say there's no more competitive or sharper negotiations than I've ever seen between

(Tr. p. 557)

our own brands trying to get together on a plan.

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(Tr. p. 565)

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DIRECT EXAMINATION

(Resumed)

By Mr. Tincher:

Q. Mr. Morgens, in advertising your food, case goods products and in Clorox as well these advertisements are primarily directed to the attention of the housewife, are they not? A. Yes, they are.

Q. I believe we've talked today at one time or another, sir,

(Tr. p. 566)

about various types of promotion techniques, two for one sales—let me enumerate them for you—two for one sales, then with the personal size Ivory there is the four for the price of three, is there not? A. I think so, yes, sir.

Q. And P & G also has used the technique of distributing free samples of the merchandise? A. On new products.

Q. On new products. And, of course, we've talked about the coupons which the customer sends in and premiums.

Now are there any other promotional techniques used by P & G that we haven't covered? A. Probably. I don't happen to think of any, but we—I think—Did you mention contests?

Q. Oh, no, sir, I did not. A. I don't think of any others.

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(Tr. p. 567)

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Q. Now does P & G have a separate department that handles all promotions or does each product have its own department for promotions? A. We have what we call a brand advertising and promotion organization on each product. They function on that product and on that product alone, and they compete with our other brands and other brand organizations that we have.

(Tr. p. 568)

Hearing Examiner Haycraft: When you say compete with, I don't understand quite what you mean by that.

The Witness: No, I mean—I'll take this example, your Honor. We have a brand man, what we call a brand man on Tide who is responsible for advertising and promotion on Tide. We have another brand man—and each of those may have one or more assistants—on Cheer. Now, we think of Tide as competing with Cheer, and we think—and those two groups are highly competitive of each other. They don't let on to the other one what they're going to do. They play on the element of surprise, and their plans—they don't sit in on the meetings of the other brand and learn what it's going to do. It's really a competitive organization.

Hearing Examiner Haycraft: Well, by that you mean there's nobody that sits over and controls——

The Witness: Yes, they head up obviously at some point to one person.

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The Witness: And the philosophy of the company—For example, Clorox heads up to a manager of Clorox and then to

(Tr. p. 569)

me, and a soap brand will head up to the head of the soap business and then to me, and that would be the only place they come together, but there is no competing for advertising funds. There is no pool of advertising funds which is shoved one way or the other. Each one gets from his own brand what's justified by that brand and by the operations of that brand, and it lives or dies on its own feet, and we——

Hearing Examiner Haycraft: Well, what fact would you take into consideration then? The results of previous years?

The Witness: The results of previous years, and some of our brands have died. But we don't think in terms of moving funds from one brand to another. That brand has to make a profit, and that brand has to compete——

Hearing Examiner Haycraft: Well, if you spend too much on advertising promotion, you won't make a profit?

The Witness: He certainly won't, and that's why he's not likely to——

Hearing Examiner Haycraft: And when he comes in with a plan they used before and successfully, why, you're more willing to spend money on it than you are something new?

The Witness: Generally speaking we have determined—we determine what we spend on a brand in two ways. One is by history of what you have to spend to be efficient, to efficiently distribute that brand.

Hearing Examiner Haycraft: That is to move it?

(Tr. p. 570)

The Witness: To move it and to have it be healthy.

Hearing Examiner Haycraft: And profitable?

The Witness: And profitable. We don't depart from that history because the brand's in trouble or because the brand is successful. We live with that history until we prove that something else would be more efficient, and if the brand's in trouble it's up to the ingenuity to get——

Hearing Examiner Haycraft: Well, don't you as an overall manager of it have anything to say about whether a successful method or procedure or policy with one brand could be used with another? Suppose, for instance, that Tide had been very successful in some type of promotion, housewives and so on, and Cheer has not been doing so well. Can't you suggest to Cheer to go——

The Witness: Your Honor, I certainly could suggest that, but as soon as Tide does anything that's successful not only do our other brands know it but our competitors know it because all of our advertising and promotion operations are highly visible. They're out in the open. You can see the copy; you can see the package; you can see the plan, the promotion plan. There is nothing secret that we have for more than about five minutes, speaking loosely. As soon as the plan hits the public then immediately your competitors within your company and outside your company are trying to evaluate what that man's—how successful that plan is.—

(Tr. p. 571)

Hearing Examiner Haycraft: But you're the only one that really knows?

The Witness: Well, you can get a pretty good idea when there's something really good.

Hearing Examiner Haycraft: Of course, the others can tell when they have been hurt.

The Witness: They can tell when they have been hurt. They see the Nielsen figures.

Hearing Examiner Haycraft: Go ahead, Mr. Tincher.

Mr. Tincher: All right, sir.

By Mr. Tincher:

Q. Well, I take it—and correct me if I'm wrong, sir—but I take it that under the P & G policy that the company as such is not going to carry any dead wood on any product. The product must make its own place and be aggressive in its own way? A. That's correct.

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(Tr. p. 572)

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Q. Now in placing the advertising of P & G products, P & G uses what is known as group or mass rates, does it not, or what term do you use in describing the rates involved? A. We buy on the basis of the card rates as published.

Q. And those card rates provide for increased prices according to the volume and the continuous nature of the advertising, do they not? A. There are discounts published for all to see on the card rates.

Q. And to take advantage of those discount structures the P & G Company lumps all of its products in a given period, does it not, rather than placing each one separately? A. No. It places each one separately through its own advertising agency. We have currently about ten advertising agencies. I don't quite know what you're getting at, Mr. Tincher, but the maximum savings which

we have calculated that result from a reduction in advertising costs on Clorox after the Procter & Gamble purchase and before have been calculated at about $50,000 on four million dollars worth of advertising, somewhere in that area. Now that's on the card rate. In addition, the Clorox people have told me that they can buy television spots less expensively at a lower cost.

(Tr. p. 573)

per message than Procter & Gamble people can buy, and that does not surprise me because a great many small companies can.

Q. Now the figure you gave—— A. Now that is off the card rate; that's below the card rate.

Q. The figure you gave of $50,000, that was computed on the assumption that Clorox would continue to advertise in the future as it has in the past? A. On the basis—well, we are continuing to advertise the way the old Clorox Company advertised. We've made very few changes in their advertising. We thought it was a successful operation. We thought we'd be foolish to change.

Q. The answer to my question then is yes, that it was based upon the advertising that Clorox had done in the past? A. No. It's based on our present Clorox advertising on the one hand as against the Clorox advertising as was done by the Clorox Chemical Company, the former owners. They are very similar plans, but the calculation was based on what we are doing now and what we were doing before the acquisition.

Q. Mr. Morgens, is not the discount rate in advertising a very substantial amount? A. Mr. Tincher, I don't know what you mean by very substantial.

Q. All right, then, what is it, sir? A. The bulk of Clorox advertising is in daily newspapers.

Howard Joseph Morgens—Direct

(Tr. p. 574)

There is no discount rate that we get in daily newspapers. The only discount rates in daily newspapers are to the advantage of the local advertiser. The local rates are lower than the national rates. A local bleach company, of which there are many, buys newspaper advertising at a lower cost than in national advertising. Now the other type of media advertising which the Clorox Company does is they use some magazines, black and white, I think, half pages. There is a discount structure for magazine advertising, and we do have a lower cost on that part of the Clorox expenditure which goes into magazines, and that adds up, as I say, I'm told to $50,000.

Q. What is the discount structure, sir, on the magazines? A. I can't really describe it. It varies I think on every publication. It's the card rate. It's a published rate which each magazine justifies on its own.

Q. That same question with reference to the television and radio. A. On television Clorox uses television spots. That depends again—that means it's bought at each individual station. The television spot card rates give some advantage to a larger advertiser than to a smaller one. However, as I said, the Clorox people tell me they can buy messages at a lower cost on television spots than we can, and I'd like to illustrate why that doesn't surprise me. We've had many a

(Tr. p. 575)

local advertising agency solicit our business on the basis that it was and can get television spots at lower than the published rate or can get preferred positions on television, which means that for the same money they can get a lower cost per message.

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Q. Now, Mr. Morgens, isn't it a fact that on television an advertiser who lumps a great many products together and buys a great deal of advertising can get his total advertising for as much as 30 to 40 per cent less than if he had taken each product separately and advertised it? A. I don't know what the calculation is but I certainly don't think it's anything like that high. Mr. Tincher, on buying television, for example, it depends on whether—it's a very complicated rate structure, and I can't—I don't want to try to give it to you, but it depends on such things as if you're buying a half-hour program whether you buy one that's immediately adjacent to another half-hour so that you get an hour's rate rather than a half-hour rate. It's very difficult to buy a half-hour adjacent to another program. I

(Tr. p. 576)

don't think we have one. We may have one but I don't—Sometimes you spend years trying to get a solid—what we call a solid hour on the network to get that discount structure. It depends on so many things like that. I don't think I ought to try to recall it.

Q. Yes, sir. I realize that. It depends on many factors, the time of the day, the make of the program, the talent involved and all that sort of thing. But my basic question is, is it not a fact that in purchasing T. V. time or radio time that it is much more economical for a larger producer lumping many products together, regardless of the types of programs he buys, than it would be for him to buy the same program for the same product and pay for each product and each program separately? A. It is more economical on time. There are no advantages on talent, and, as you probably know, the talent costs frequently are the higher of the two costs.

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(Tr. p. 577)

Hearing Examiner Haycraft: If I understood your testimony, does the Procter & Gamble Company take advantage of this larger discount on time by lumping your various products?

The Witness: We have a viewpoint, your Honor, that the discount—what you gain from the discount isn't nearly as important as the proper media structure. We don't try to buy to get discounts. We buy the best advertising. Sometimes we get discounts. I'm not sure whether that's answering your question or not, but we pick up all the discounts that we have coming to us, but we don't determine our advertising program in order to take advantage of discounts.

Hearing Examiner Haycraft: Well, the reason I asked that question, I understood you to say in answer to previous questions that each brand of Procter & Gamble stands on its own feet in its advertising costs.

The Witness: Yes, sir.

Hearing Examiner Haycraft: And this question that he was asking you now would indicate that if Procter & Gamble lumped all these various brands together on television time or radio time, you might get a lower rate, that is, a discount by virtue of the fact that they had done that. My question is whether you do take advantage of such discounts by lumping together your various brands and various products.

The Witness: Let me see if I can explain that. Yes, we do take advantage of any discount that's coming to us. We'd

(Tr. p. 578)

be very foolish not to. But we don't lump them together in order to get that advantage except in one sense. Each

brand buys its own media and buys it through its own agency. There's no group purchase.

Hearing Examiner Haycraft: Then you say to the television or the radio, we have five of our products are taking so much——

The Witness: We buy on the card rate and the agency involved knows what else the company is buying from its contacts with the network. That's available to anybody, our competitors also, and the cost of that can be calculated including the discount, and that's what that brand pays. But it's a brand cost.

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(Tr. p. 585)

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By Mr. Tincher:

Q. Now, returning, sir, to the introduction of Gleem and Crest, these products were introduced to the public in a national campaign effort, were they not? A. Yes, they were. I understand they were expanded in steps across the country, not one fell swoop.

Hearing Examiner Haycraft: Do you operate on that plan of selling certain markets where you try them out first?

The Witness: Yes, we do experiment everything almost locally, and there we hammer out the basic plan and how much money should be spent, and so on.

Hearing Examiner Haycraft: So you get an idea how the public is going to react?

The Witness: Yes, we do. And then we usually expand sectionally. We don't go all over the country at one time. We move first in one part, then to another.

By Mr. Tincher:

Q. Well, what was the actual date, sir——

Mr. Royall: Well, your Honor—Go ahead, finish your question.

By Mr. Tincher:

Q. When was the actual date when national distribution and national advertising of these products commenced?

(Tr. p. 586)

Mr. Royall: Now, your Honor, we object. Our objection is directed to this, we're going to object to the details of these specific products that you're planning to now enter on the grounds that we do not believe they are relevant, these details are not relevant, and I don't want to repeat that objection each time in case your Honor should admit any, but I hope you will not admit any of these details.

Hearing Examiner Haycraft: Well——

Mr. Royall: No foundation laid.

Hearing Examiner Haycraft: It's hard to tell just where to draw the line. I do think we should have in the record a pretty good understanding of Procter & Gamble's policy of selling and advertising, and I suppose that these particular questions on these products illustrate as well as can be illustrated as to how Procter & Gamble distributes their products, and how they put them on the market.

I don't think he's going into sufficient details as to call for an objection. I'll overrule your objection at this time, and you may have a standing objection, and if I think he is going too far into such details I'll sustain it.

Mr. Royall: All right, sir.

Hearing Examiner Haycraft: Go ahead, Mr. Tincher.

A. To the best of my recollection we were national on Crest, finally reached the point we were selling nationally on Crest in the spring of 1956, the first part of 1956.

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(Tr. p. 588)

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Q. Had Procter & Gamble ever been in the toothpaste business prior to the introduction of Gleem or Crest?

Hearing Examiner Haycraft: I sustain an objection on that. I don't see where we're going, Mr. Tincher.

Mr. Tincher: Mr. Haycraft, I'd like to do something I hate to do, and very seldom do, but I would like to proffer the answer to that question.

Hearing Examiner Haycraft: All right.

Mr. Tincher: The answer would be no, if allowed to answer.

The Witness: I would like, your Honor, to——

Mr. Royall: No, sir.

The Witness: ——make sure——

Mr. Royall: That is not a fact, your Honor.

The Witness: I would like to make sure that you realize we were in the dentifrice business prior to the introduction of Gleem, even though we may not have been in the

(Tr. p. 589)

toothpaste business. We had one of our classic failures with the introduction of Teel back in 1940. I think that was used for brushing teeth even though it was liquid, and not paste in form.

Hearing Examiner Haycraft: I'm going to let everything stand.

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By Mr. Tincher:

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(Tr. p. 591)

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Q. Does P & G have Nielsen or other survey figures which show the share of the toothpaste market which these products have enjoyed?

Hearing Examiner Haycraft: Now, I'm going to stop you on that, Mr. Tincher. The objection is sustained. It seems to me the testimony of the witness, until you can show something to the contrary, that anything you develop with respect to dentifrices or toothpastes, under those circumstances, the shelf space, and all that, as developed by the witness, will not have any relevancy to the market on bleaches.

There is such a contrast, such a difference between the two products, their uses and their method of sale and display and all that, that anything you might prove as to Crest and Gleem would not have any relevancy to the policy on Clorox.

Now, I'm not saying that is true of other products.

(Tr. p. 592)

But on those particular—I'm doing that now so as to obviate the time and necessity of going into it, the time that would be taken by you in further developing, and by counsel for respondent in rebuting.

I think the point that the witness has made, the testimony he has given us, and I say unless you have something to show it is relevant, to my own knowledge, my observation, of which I'll take official notice, there just isn't what I judge to be a relevancy between those two lines. Anything you would prove as to Gleem and Crest would not have any application to Clorox.

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(Tr. p. 593)

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Q. All right. Now let me ask you, Mr. Morgens, you're quite familiar, are you not, with the introduction and promotion of the product Comet? A. I am familiar with that, yes.

Mr. Royall: Same objection, your Honor.

Hearing Examiner Haycraft: Objection's overruled. Comet's in an entirely different category.

Mr. Royall: Yes, I know it is, sir. My objection is picking out specifics not——

Hearing Examiner Haycraft: Well, I'll give you the same standing objection, and when I think that he's going too far I'll rule. Otherwise it will be understood that your objection is overruled and you can keep going.

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(Tr. p. 595)

By Mr. Tincher:

Q. Would you answer the Examiner's question, please, as to how Comet was introduced? A. Are you asking about——

Hearing Examiner Haycraft: The history of it.

The Witness: The history of it?

Hearing Examiner Haycraft: Yes. I didn't recognize it.

The Witness: Comet is a scouring cleanser.

Hearing Examiner Haycraft: Of the Old Dutch Cleanser type?

The Witness: Generally speaking, yes, sir. It competes with Old Dutch, Ajax, that type of product.

It was tested during the spring of 1946 on experimental markets. Peoria, for example, and a few other cities scattered around the country. We went broadly in the central part of the country in the fall of '56.

Hearing Examiner Haycraft: '56 you say?

The Witness: '56.

Hearing Examiner Haycraft: I though you said something about '46 a while ago?

The Witness: If I did I misspoke myself. I meant '56.

Hearing Examiner Haycraft: All right, go ahead.

The Witness: We went broadly in the central part of

(Tr. p. 596)

the country in the fall of '56. We went into the balance of the country in the spring of 1957.

It has been very successful. Part of the plan was to sample the product, which we did by mailing a two ounce package, a cylinder. The produce was unique. We thought that the—And the customers showed they liked it almost immediately. It was a new and different type of product.

Now, it has achieved a fair share of the market right from the start.

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By Mr. Tincher:

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Q. I believe you just told the Examiner that the product acquired a fair share of the market. Is that correct? A. Yes.

Q. And could you tell us what that share of the market was?

(Tr. p. 597

A. Well, it is difficult always to give you a precise figure on share of market. My best recollection of what Nielsen shows is approximately 25%, maybe 26% of the scouring cleanser business at this time, in grocery stores only.

Understand when I quote a Nielsen figure, that we follow Nielsen, and use it mainly for determining the trends in the share.

Q. Yes. A. Rather than the absolute amount. We think Nielsen overstates our Comet business and all of our soap business, because it only pretends to show the share in the grocery trade, and it does not cover soap products

or cleanser products the share in drug stores or department stores. We know that we have a larger share of our business on those type of products in grocery stores than we do in the drug trade or department store trade.

That's why I say when we quote a Nielsen figure it usually represents a higher share of the total business on that product than is actually the case.

Q. Wouldn't the same be true, however, sir, of the other competitive market shares which are shown in the Nielsen report, for example on Ajax and Bab-O, the same would be true of them, would it not? A. It is not true necessarily of them. Colgate has been historically much stronger in the drug store than Procter &

(Tr. p. 598)

Gamble. They have a much larger drug store business than we have, and generally speaking they stand much better in the drug stores in relation to how they stand in the grocery stores than we do.

Hearing Examiner Haycraft: That's historically true, isn't it?

The Witness: Yes, sir.

Hearing Examiner Haycraft: They've catered more to the drug trade.

The Witness: They have, and they have a strong position in the drug business.

By Mr. Tincher:

Q. And it would be just the converse on something like Old Dutch Cleanser, would it not, sir? That's practically all in the grocery store? A. I would imagine they have about as much in the drug stores, maybe more in relation to grocery stores than we do. I'm not sure how they stand. I say maybe more just because they've been a well known

name for so long, and the drug trade usually moves a little slower, more slowly than the grocery trade.

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(Tr. p. 601)

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By Mr. Tincher:

Q. I take it by your answer, sir, that in the introduction of the products, such as Comet, that obviously at the beginning, for a certain period the product is not paying its way, the revenue coming in is not paying for the promotion going out. A. That certainly is correct. You can't mail samples before you even have a—moved any off the consumer—off the dealer's shelf. You can't mail samples without going into the red on that operation.

Q. And the same would apply to the initial national advertising and promotion. A. (No response.)

Q. I say the same would apply to the initial national advertising campaign and promotion in conjunction with it. A. Yes, you take a gamble. Your volume is going like this, and say you start your advertising like this. Over a period

(Tr. p. 602)

of time it has to pay, obviously.

Q. Had P & G ever been in the scouring cleanser business prior to the introduction of Comet? A. A long time ago I understand we made a scouring cleanser called Chic. I don't think it ever amounted to anything. I don't think it ever amounted to anything of much importance. But we did manufacture a scouring cleanser by that brand name.

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Q. Now, when Comet came out it had to compete against

well established and old brands such as Ajax, Bab-O, brands of that nature, didn't it?

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A. Yes, it did.

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Q. Now, when Comet was introduced did grocers in general allocate new shelf space to Comet, or did they merely shift

(Tr. p. 603)

or use shelf space that had previously been used for other scouring cleansers? A. I don't know where that shelf space comes from. It might come from canned fruit, it might come from—In the first place it's up to the store as to how it allocates its shelf space. We have very little control—We have no control over it; we have very little to do with it. And each store makes its own decisions about what it wants to replace, if it replaces—if a replacement is necessary. Sometimes there's new shelving and expansion, and, as you know, the stores have gotten much bigger recently than they used to be, on an average.

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(Tr. p. 611)

Q. Now, all the P & G soaps, detergents, cleanser products, as well as Clorox, are used primarily in the bathroom, the kitchen or the laundry, are they not?

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A. Yes, I think that's correct. All P & G soap products did you say?

By Mr. Tincher:

Q. Yes. Soap, detergents, cleansers and bleach.

Hearing Examiner: Would you repeat that again, where they are used?

Mr. Tincher: The bathroom, the kitchen and the laundry room.

A. I think that's approximately correct, yes.

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(Tr. pp. 612-613)

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Q. Now, in the grocery stores liquid bleach is stocked in with the soaps, detergents and cleansers, is it not?

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A. By no means consistently. In fact, I have no statistics on this, but, naturally, I get in a great many grocery outlets.

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Q. Certainly. A. It is not the common practice, I will say.

Q. Well, what section, then, is the Clorox generally stocked in? A. Well, it's usually stocked in the section of starches, bluings, mops, and buckets, and other products of that general category.

Q. And cleansers are usually in that same section, are they not?

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(Tr. p. 614)

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A. Cleansers vary a great deal. They're usually stocked with other cleansers. You can usually see Comet and Bab-O and Ajax and Old Dutch stocked together. Sometimes it's near the soap, and sometimes it's on the other side of the aisle from soaps, and sometimes it's around the corner.

By Mr. Tincher:

Q. Yes, I realize that. They are all stocked together, and bleaches are all stocked together, too, aren't they?

A. That is correct. Almost a separate category but not necessarily with soaps.

Q. They are not necessarily. But my question is, is not the bleach section usually adjacent to the cleanser section?

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A. I can't say that's any consistent pattern at all, that it's adjacent. You may have some information that I don't have on that. But I don't feel that I know enough to say that's the case. I don't believe it is.

By Mr. Tincher:

Q. Well, when you say it's not consistent, you do recognize that it does occur? A. Sometimes.

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(Tr. p. 620)

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Hearing Examiner Haycraft: How did you come to select the sample in the case of Comet?

The Witness: Well, we decided we had a product—we learned from the consumer that we had a product that the consumer immediately liked.

Hearing Examiner Haycraft: Where did you find that out?

The Witness: We found that out in consumer research long before we brought the product on the market. The product is distinctive in many different ways; green in color, it has a pine odor, it has an entirely different kind of abrasive material in it, which we think is finer, and does a better job than any other, and it also has this flavoring of bleach.

Once we learned that the product was immediately preferred to anything on the market, we knew that—we thought

(Tr. p. 621)

that the best way to sell that product would be to give the woman a sample and let her use it, see it, smell it, look at it, look at the result.

We then sampled the product in a few small towns, and we waited a period of months watching the result, making sure that that cost of sampling came back to us rapidly on that product. When it did, in conjunction with the many other factors that go to make up a product's success, which it has to be sold at the right price, for one thing, it has to have an effective story told about it, in the presentation to the public, and we thought we were ready to go broadly with that type of sample.

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(Tr. p. 622)

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By Mr. Tincher:

Q. All these experiments and evaluations which have to be made, even before a promotion is launched, so to speak, the ultimate objective of them is to find out what makes the housewife tick, and what she is thinking; isn't that right? A. How she will react, that's right.

Q. Now, how is the effectiveness of the promotion determined so you will know whether you want to use that again, or whether it should be continued, or whether it should be stopped, or anything else you would want to know about a promotion as to whether or not it is accomplishing results? A. Well, in the first place we wouldn't think of sampling again, we have done that so rarely. Sampling is a very expensive thing. You can do that only with a new product, or, unless you make some very revolutionary change in the product.

I really don't recall any time we have sampled more than an introduction of a new brand.

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(Tr. p. 623)

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Q. And these various methods of sampling and testing consumer reaction, sir, are they the most scientific methods that you know of today, at the present time, to determine this effectiveness; is that correct? A. That is correct; the most scientific methods that are known about it. The advertising agency business knows of these methods, they are available to everyone, the industry are competitors in all of them. They are available generally through the advertising business. We are certainly not the

(Tr. p. 624)

only ones that use them.

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(Tr. p. 625)

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Q. I see, sir. And the manufacturing subsidiary is the Procter & Gamble Manufacturing Company? A. That's correct.

Q. How are the products sold? Are they sold through another subsidiary, or, once again, do you have the—— A. The corporate setup is through the Procter & Gamble Distributing Company, which qualifies to do business in every state in the Union. The management setup, as such, is by divisions.

Q. And those divisions are broken down into what we have talked about as the case-goods division, the toilet goods—— A. Soap products, toilet goods, food products, paper products.

We have a Cellulose and Specialty Division.

And Clorox Company is run separately, as a separate company, even though in its organization along management lines it is run the same way as a separate division might be.

Hearing Examiner Haycraft: Clorox is manufactured

(Tr. p. 626)

by the——

The Witness: Clorox is manufactured by The Clorox Company.

Hearing Examiner Haycraft: It is not by the——

The Witness: Not by the Procter & Gamble Manufacturing Company.

Hearing Examiner Haycraft: Does it maintain its own separate sales organization, too?

The Witness: It does.

Hearing Examiner Haycraft: Because it sells to a different class of trade?

The Witness: Yes. The sales organization is under the Clorox Company name, not under the Procter & Gamble Distributing Company name.

By Mr. Tincher:

Q. Do you, as president of The Clorox Company, have sufficient control of that corporation to exercise policy and executive discretion within it? A. Yes, I believe I do, yes, sir.

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(Tr. p. 629)

Courtroom No. 1, Room 805
United States Post Office and
Courthouse
Cincinnati, Ohio
February 4, 1958

Howard Joseph Morgens—Direct

Met, pursuant to adjournment, at 10:00 o'clock a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 631)

PROCEEDINGS

Hearing Examiner Haycraft: The hearing will come to order.

Mr. Morgens will resume the witness stand.

You may proceed, Mr. Tincher.

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(Tr. p. 657)

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Hearing Examiner Haycraft: Well, I think the question——

The Witness: I would like to——

Hearing Examiner Haycraft: ——goes a little deeper than that. I think we thoroughly understand that feature of it, but I think what Mr. Tincher is trying to get at is whether or not it is the policy or the plan of Procter & Gamble Company, when they have learned all these things, to expand the distribution of those various products, utilizing their sales organization, their advertising know-how.

The Witness:

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(Tr. p. 658)

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When it comes to Clorox, we have there what we would call a fully-developed business. Clorox has a higher share of market than any product that Procter & Gamble has

ever had in its history, to my knowledge, certainly higher than any product that Procter & Gamble has now.

We think any product in that area of share of market is probably vulnerable, and I am quite sincere in saying our first and our major hope is that we would be able to hold somewhere near that share of market controlled by the—not—by Clorox.

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(Tr. p. 660)

The Witness:

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And Clorox has a much larger share of the market than anything we have ever seen. I think we are competent in our field to build a brand, but we have not shown anything like

(Tr. p. 661-A)

the competence the old Clorox Company had.

Q. I take it, then, the Clorox Company was an extremely successful merchandiser and advertiser. A. I have a tremendous respect for them, and if we can be anywhere near as good we will be happy.

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(Tr. p. 662)

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Q. Now, all these products we've been talking about, Mr. Morgens, the cake mixes, the paper products of Charmin, peanut butter, and, of course, Clorox we've been talking about, all

(Tr. p. 663)

these products are sold in grocery stores, are they not, sir? A. Yes, they are.

Q. And all have the majority, if not the great majority, of their sales in grocery stores? A. Yes, they have.

Q. And all of these products depend upon consumer demand in order to be sold? A. They depend on a great many things, one of which is consumer demand, yes.

Q. And in each of these cases, consumer demand has a great deal to do with the advertising and promotion that's given the product, has it not? A. If I were saying it I would reverse it. I think advertising and promotion have a good deal to do with consumer demand.

Q. Right. A. Not necessarily the most important thing to do with consumer demand, but a great deal to do with it.

Q. Now, another test that all of these products face, they all must be quality products. Isn't that right? A. Well, if they're going to be Procter & Gamble products we believe they ought to be quality products, yes.

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(Tr. p. 670)

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Q. Mr. Morgens, does The Clorox Company have contracts with its distributors which require, or does it have arrangements with the retailers and the dealers which require The Clorox Company to repurchase merchandise?

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A. We have no contracts that I know of. There may be some kind

(Tr. p. 671)

of letter or understanding which I do not know of. Clorox Company's arrangements with these distributors have been going on for many years, and my understanding is we could change any distributor any time we so desire.

By Mr. Tincher:

Q. Your answer is no? A. If there's a 30-day understanding that may be in a contract or a letter of some kind, I don't know. But it isn't a significant part of our arrangements with the distributors.

Q. Well, so far as that goes, Mr. Morgens, there is no contracts between The Clorox Company and its distributors. A. That's what I——

Q. Am I correct? A. To my best understanding that is correct.

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(Tr. p. 675)

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Q. All right, sir. Let me ask you if the general, or national rate, which is described on the page of this exhibit which I

(Tr. p. 676)

have given you is more or less than the local rate which is described? A. In practically all instances it's more than the local rate.

Q. And why is that, sir? A. It's just a practice in the newspaper trade.

Q. Well, do we understand you that a newspaper, say the Cincinnati—any Cincinnati newspaper will charge Procter & Gamble more to advertise than it will to a local company selling the same product? A. That's correct.

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(Tr. p. 677)

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Q. Can a local producer use a national advertising agency and get the national rate? A. A local company —My understanding of this is this: That a local company, a department store here, a local manufacturer

Howard Joseph Morgens—Direct

(Tr. p. 678)

can advertise in a local newspaper at a local rate.

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(Tr. p. 690)

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Q. Well, my question is, sir, Is not the product Comet sold by the same salesmen who sell Spick and Span, and Tide, and Cheer, and Duz, and Oxydol, and Ivory and Camay? A. Yes, it is.

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(Tr. p. 698)

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Q. Then to catch the quantity aspect of your desired product the independent surveys such as Nielsen and those are used; is that correct? A. They are the best guide that we know to use, even though we know they, too, have to be interpreted with judgment.

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(Tr. p. 737)

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Q. Let me show you Pages 2 and 3 of Commission's Exhibit Number 21, Mr. Morgens——

Hearing Examiner Haycraft: 221-B.

Mr. Tincher: 221-B.

Hearing Examiner Haycraft: Yes.

By Mr. Tincher:

Q. It's rather awkward to handle. You'll notice thereon the minimum requirements are called to the attention of the salesman for a satisfactory shelf space arrangement, and also criteria are listed for an unsatisfactory shelf space. Then on

(Tr. p. 738)

the following pages you'll see pictorial representations of what is considered satisfactory and what is considered unsatisfactory. A. Yes.

Q. All right. Now, sir, does the salesman who enters the particular store make the determination of whether or not the P & G products at that store meet the minimum requirements of a satisfactory shelf space arrangements? Of course, I mean by that as far as the company is concerned. A. Does the salesman make the determination whether it is satisfactory or unsatisfactory? Well, he makes one determination, I would say.

Q. And does he send that to his district office? A. Yes. I suppose he does, if requested to do so. I don't know that it is done as a routine matter.

Q. Well, let me ask you this: It is one of the normal duties of a salesman, is it not, to use this booklet and to attempt in the chain stores to obtain what is listed there as a minimum requirement, and to obtain, of course, better than the minimum if he can? A. Well, I would have to answer that this way: It's one of the salesman's normal duties to make sure, to try to secure adequate shelf space for our brands. And this booklet, I don't know whether he uses this booklet. I've been with a number of salesmen, and I haven't seen any of them use it, but certainly

(Tr. p. 739)

for his information this helps him in his thinking about how he wants to talk to the chain about shelf space.

Hearing Examiner Haycraft: He takes that up with the local manager, doesn't he?

The Witness: It varies with the chain. Most often the salesman has very little control over the shelf space that

comes down from the chain headquarters. Frequently the instructions from chain headquarters are not carried out in the store, and any salesman who is familiar with those instructions can be helpful——

Hearing Examiner Haycraft: Well, suppose the salesman isn't satisfied? Suppose he attempts to get more shelf space, and the local manager tells him, "Well, I can't give it to you. I'm limited. I've got my instructions." Then what is the salesman supposed to do? He feels P & G is being discriminated against. What does he do?

The Witness: In the first place the salesman probably is never satisfied, and his best recourse is to work with the chain headquarters.

Hearing Examiner Haycraft: I say does he have the authority to work with the chain headquarters in the local city?

The Witness: It depends on the size of the chain. Sometimes he has authority to work with them, sometimes he has to work with the unit manager.

Hearing Examiner Haycraft: Does he ever take it up

(Tr. p. 740)

with the divisional manager in the P & G organization to have them take it up with——

The Witness: Sometimes it goes that far.

Hearing Examiner Haycraft: ——the higher manager of the chain?

The Witness: Well, more than likely the division sales manager will go out into a district, and he will go into some stores and see, and if it is too bad then we will ask why, something about the problems of that chain. And in rare instances he might even go see the chain manager himself and discuss it.

But in most cases we find the division manager stays away—they should stay away, as it tends to undermine the responsibilities of the local manager.

Hearing Examiner Haycraft: The local manager tries to work it out himself.

The Witness: That's correct.

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(Tr. p. 747)

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By Mr. Tincher:

Q. Now, I think I understand your testimony correct, sir, prior to acquiring Clorox Chemical Co., P & G at that time at least was not producing either a liquid or a dry bleach.

(Tr. p. 748)

A. We were not in the bleach business at any time to my knowledge in our history.

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Q. I understand, sir—We discussed the distributors of Clorox this morning. Do I understand correctly that every distributor who was distributing for the Clorox Chemical Co. is now distributing for The Clorox Company? A. I haven't heard of any changes. There may have been one that was dropped, and another replaced him in one area, but I think, certainly substantially that is correct.

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(Tr. p. 752)

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Q. Mr. Morgens, under these contracts with the washing machine manufacturers, P & G pays the manufacturers a dollar for each demonstration wherein the P & G product is used, does it not? A. I think that's right.

It sounds right to me. I'm not as up to date on it as I would like to be. That's for a home demonstration, a demonstration in a home.

Hearing Examiner Haycraft: Is that usually where the retail dealer servicing the machine goes out to the home to show the housewife how to operate the machine?

The Witness: An automatic washer needs to be installed in a home.

Hearing Examiner Haycraft: Yes.

The Witness: At the time the automatic washer is installed there's usually a demonstration in the home.

Hearing Examiner Haycraft: By someone from the firm she bought it from.

The Witness: That's right.

Sometimes that is done by a representative of a manufacturer; sometimes it is done by a representative from the distributor who is responsible for the distribution in that area; sometimes it's even done by a representative of the dealer who is serviced by a distributor who in turn is serviced by a manufacturer.

(Tr. p. 753)

By Mr. Tincher:

Q. And dealers also have demonstrations on the premises of their stores, do they not? A. That is right. I don't think you'll find that we pay anything like that much for the in-store demonstration, to use your phrase.

Q. Now, under these arrangements, the washing machine manufacturers also advertise and recommend P & G products in those advertisements, do they not?

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(Tr. p. 754)

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A. These are advertisements which Procter & Gamble wanted featuring—These are Procter & Gamble Tide advertisements.

By Mr. Tincher:

Q. Oh, I see. A. These are not advertisements of the washing machine company.

Q. Procter & Gamble pays for those advertisements? A. They are our ads, yes.

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(Tr. p. 755)

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Q. Mr. Morgens, when did these contractual relations commence with the washing machine manufacturers?

(Tr. p. 756)

A. Approximately two or three years ago. At that time the product All had all of these tie-ups, and we were trying very hard to get them, without much luck. Since All has been transferred to Lever Bros. through acquisition, for one reason or another they haven't been as active.

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(Tr. p. 759)

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Q. Let me ask you, Mr. Morgens, just for your own personal knowledge of whether or not the product All is being promoted in this manner at the present time in conjunction with any automatic washing machine.

Mr. Royall: Objection.

Mr. Tincher: Now, sir, I'm seeking——

Hearing Examiner Haycraft: Overruled because the witness brought that in.

Mr. Royall: Yes, sir.

Hearing Examiner Haycraft: Go ahead. Answer the question.

A. The question is of my personal knowledge. I can't answer that. I don't know.

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(Tr. p. 760)

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Q. Now, I think the Examiner has already questioned you about this. Do I understand that commencing in 1956 P & G entered into similar contracts with various automatic dishwasher manufacturers in conjunction with the product Cascade? Would that be the approximate right date? A. It was either '55 or '56. I'm not sure.

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(Tr. p. 761)

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Q. Can you tell us, Mr. Morgens, the other automatic dishwashing machines that have this promotional arrangement with Cascade? A. My last understanding—and I don't pretend to be up to date—was that—I haven't heard anything different—is that G. E. was the only company which was doing it exclusively for Procter & Gamble, and that was on the basis of some peculiarity about their machine; they thought our product worked best in it.

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(Tr. p. 762)

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Q. All right. Now will you tell us what personnel was involved in the P & G organization as far as researching and investigating and determining whether or not the acquisition should take place? A. Well, I'll say it was largely my own determination, but I sought first the

approval of the president of the company at that point and the concurrence of the administrative committee group of the company. Obviously I wouldn't act on anything of that importance without doing that.

Q. Right, sir. And prior to consulting with those people you had to know pretty well where you were before you would go see them, did you not? And when I say where you were, I mean

(Tr. p. 763)

as to what would be involved in the acquisition and the possibilities of success or failure in the acquisition. A. Yes. I would certainly have to have a case in mind.

Q. And to prepare yourself with those facts, what studies did you undertake or make or what studies did you have made for you? A. Well, we had market research studies available on the bleach business that showed such things as the number of women who used it and the ages of the women who used it, the type of homes that used it and some pieces of information about the purposes for which they used it, not by any means complete.

We, of course, had Nielsen figures available to us because the Clorox Chemical Company had subscribed to Nielsen and made available to us the back reports. We had the Clorox Chemical Company's record of shipments and profits. We worked with the Clorox Chemical Company people to understand their business. Other than that I don't recall really very much. I assume that there were—that the other officers of the company whom I asked for concurrence with the view might have spent a little time on their own with digging into it.

Q. Well, would it be a fair statement to make, sir, that P & G exhausted all possible or conceivable methods of in-

vestigation that were reasonable prior to expending the thirty million dollars for the acquisition?

(Tr. p. 764)

A. We exhausted everything reasonable we could, we thought—of course within the time limits involved.

Q. And in so doing you had your own market research department make various investigations? A. I suppose we did. I don't recall any specific surveys that we asked them for. We had a knowledge of the bleach business from past studies because we require some knowledge of the bleach business.

Hearing Examiner Haycraft: What kind of study?

The Witness: Market research, consumer studies.

By Mr. Tincher:

Q. Well, as I understand your testimony this morning, sir, the market research department would not undertake a survey on its own, would it? A. No, it would not.

Q. If they made one on bleach, it would have to have been because somebody wanted a survey? A. That is correct. But there were old market research studies on bleach that were requested by men having to do with soap products. For example, there are ingredients added to soap products, particularly in the fluorescer field, some of which are incompatible with bleach, some of which were compatible, and we had to develop a little background to the extent of which bleaches were used in order to make a better soap or detergent product.

(Tr. p. 765)

Q. So you had some knowledge of the bleach business several years prior to the time you were thinking of acquiring Clorox Chemical Company? A. We did. I would—Yes.

Q. Who is Mr. E. A. Snow in the P & G organization? A. At the present time he's our advertising manager.

Q. And what was his position in October, 1955? A. He was what we call promotion manager.

Q. And was he advertising manager in February of last year? A. He became advertising manager in October, 1957.

Q. And do you know a Mr. M. P. Link, Jr.? A. I do.

Q. Was he under Mr. Snow's supervision? A. Yes, he was.

Q. And the same question for M. T. M. Warrington? A. At what time?

Q. In 1955, sir, October. A. 1955? Yes, he was in 1955. He was transferred to a different position in January, '56.

Q. Mr. Morgens, I'll hand you what has previously been marked as Commission's Exhibit 323 for identification and Commission's Exhibit 324 for identification. These documents were provided to me by your counsel in answer to the subpoena duces tecum, and I'll ask you if those——

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(Tr. p. 766)

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By Mr. Tincher:

Q. Have you had a chance to look at those documents, sir? A. Yes, I've had a chance to look at them.

Q. I'll ask you if those documents are not the reports you were discussing a moment ago as having been made in reference to selling soap products to obtain necessary bleach information.

(Tr. p. 767)

A. No.

Q. I'll ask you then what was the occasion of these studies being made? A. Well, I see a lot of reports. This one dated October 26, 1955, came within a month or two after we first told the Clorox Company of our interest in discussing an acquisition with them, and I assume it was based on—well, it leads up to—its opening statement is, "We feel the company should consider getting into the liquid bleach business by purchasing the Clorox Chemical Company." So I assume——

Q. Well, I take it then that these two documents were made—— A. Specifically with the Clorox Company in mind, if that's what you mean.

Q. Right. And whose attention were those documents called to after they were made? A. I believe I saw these documents at the time. I'm sure I did.

Hearing Examiner Haycraft: And who prepared them?

The Witness: These were prepared by two men in the advertising department of the company.

By Mr. Tincher:

Q. And these are documents which were prepared to assist you in determining whether or not it was advisable to buy the Clorox Chemical Company?

Hearing Examiner Haycraft: Well, he's already said

(Tr. p. 768)

it was preliminary.

A. Yes, I would guess you'd say that. They were prepared at least to assist the advertising manager of the company to have a view as to whether or not he should concur along with other important people on the administrative committee, whether he should concur in this acquisition.

Hearing Examiner Haycraft: I think you've laid sufficient foundation.

Mr. Tincher: All right, sir. I offer at this time Commission's Exhibit 323 and 324.

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(Tr. p. 769)

Hearing Examiner Haycraft: R. & D. D., is that research development division?

The Witness: Yes, R. & D. is research and development.

Hearing Examiner Haycraft: What does P. & A. mean?

The Witness: P. & A. refers to profit and advertising.

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(Tr. p. 770)

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Mr. Royall: Your Honor, not to argue my objection, but I'd like to say that this was not called for in the subpoena. However, we gave it to them with the others, and therefore I'm in less position to object.

Hearing Examiner Haycraft: I'm going to ask the witness if he will with his fountain pen physically put those words in there so we won't have to look at the text every time to find out what that means. You can put your initials on it.

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(Tr. pp. 771-772)

Hearing Examiner Haycraft: Did you object to those exhibits?

Mr. Royall: I objected to the one in '55, your Honor.

Hearing Examiner Haycraft: The objection is overruled. Exhibit 323-A, B and C, and Exhibit 324-A, B, C and D are received in evidence.

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By Mr. Tincher:

Q. Now, Mr. Morgens, I will hand you what has previously been marked as Commission's Exhibit 321 for identification, which is a 27-page paginated document; and Commission's Exhibit Number 323, which is a 13-page paginated document, and I will ask you if these documents were not prepared by the market research department in connection with your testimony a moment ago when you testified that such reports were made when the acquisition of Clorox was being considered? A. They were certainly prepared by our market research department.

Mr. Tincher: I offer these two exhibits at this time, sir.

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(Tr. p. 773)

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Q. Mr. Morgens, I will call to your attention that on both of

(Tr. p. 774)

these exhibits reference is made to a Psychological Corporation. Would you tell us what that is? A. Well, I may have misspoken myself. I looked down here and I saw the Market Research Department signature. The information shown in this report is obtained in connection with the 1957 Psychological Corporation Brand Usage Study. That is an outside market research company, which we and others employ to get certain types of information for us. The information is then reported to Procter & Gamble and the market research department retabulates it and puts it out in this form.

Q. And puts it in the type of categories that are of interest? A. Yes. It probably assembles the informa-

tion in accordance with the requests that they receive as to how that information should be broken down.

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(Tr. p. 781)

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(The documents referred to, heretofore marked Commission's Exhibits 321 and 322 for identification, were received in evidence.)

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(Tr. p. 785)

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Courtroom No. 1, Room 805,
United States Post Office and
Courthouse
Cincinnati, Ohio

February 5, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 787)

PROCEEDINGS

Hearing Examiner Haycraft: Come to order.

The witness will resume the stand.

Howard Joseph Morgens, resumed the stand, and further testified as follows:

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(Tr. p. 790)

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By Mr. Tincher:

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(Tr. p. 792)

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Q. All right, sir. Now, you have used Nielsen very extensively throughout—when I say you I mean the company has used Nielsen very extensively, have they not, over a period of years? A. The company has used it very extensively to determine the trend of the share of the market that it's various brands have.

Q. Now, in the absence of actually having access to the exact down-to-the-penny production of sales of every single producer, do you know any better way to find out this trend of market share than Nielsen? A. I don't know of any better way. I think this is probably the single best guide, if one had to pick a single guide and then put it in with a lot of their other experience.

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(Tr. p. 796)

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Q. Mr. Morgens, let me hand you again Commission's Exhibit 325 for identification, and I will ask you to recall the questions and answers that we have had this morning concerning that document already, and I will ask you if you have any additional information to add as to how this volume is used, or how the various sections in it are used or interpreted.

(Tr. p. 797)

by P & G? A. I have already testified that we rely on Nielsen primarily for the purpose of observing trends in share of market. The share-of-market figures in Nielsen's reflect movement out of the grocery store to the consumer. They arrive at those figures by having men who go to the grocery stores and count the stock at a given store, let's

say on August 1st, and then return and count the stock in that same store on October 1st. They have an arrangement with the owner of that store whereby they can examine the invoices, which show how much merchandise was received, and they, by subtracting the ending inventory from the total of the beginning inventory and the merchandise received, they get a figure which they assume is what has moved out of the store into the homes.

Q. During that given period? A. During that given two-month period. And that represents the movement from that store to the home.

They also make the same calculation on other brands in the same line, and arrive at a 100 per cent figure and allocate a share figure to each brand within that 100 per cent.

Hearing Examiner Haycraft: How many stores do they do that in?

The Witness: They do it in a sampling of stores. I don't recall the exact figure. I mean, I don't know the

(Tr. p. 798)

exact figure now. At one time, not too long ago, it was, I believe, 2200 stores across the country.

Hearing Examiner Haycraft: Do you know how these stores are selected?

The Witness: They are selected, by a professional statistician's approach, to be typical of all types of outlets in all parts of the country. Therein lies room for error.

Hearing Examiner Haycraft: That's both urban and suburban?

The Witness: Urban, suburban, rural and country.

Now, opinions differ, as they are bound to do, among statisticians about how reliable and typical this sample is. For example, Nielsen cannot get any information out of any A. & P. Store, which does 10 per cent of the country.

A. & P., like most of the big chains, have pretty high development on their own private brands of bleach, soap, others, and they just make a projection from the figures they do get of what they think A. & P. might be, and therein is room for error.

There are statisticians that think it does not even attempt to cover the rural South, for example, and you would make an adjustment for that.

I cite all this to show that although we think Nielsen is the most reliable single index for determining trend in share, we don't lean on it 100 per cent, by any means,

(Tr. p. 799)

for determining the level of share.

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(Tr. p. 800)

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Q. In connection with the worth and the value of this report, sir, what is the cost to a subscriber to Nielsen for a product study such as these reports, the one you hold in your hand? A. I am sorry I can't tell you that. We have asked, yesterday, at your request, that Nielsen mail in a contract form, which is

(Tr. p. 801)

the one we sign, and which we will be glad, I assume, Mr. Royall?

Mr. Royall: That's right.

A. (Continued) ——to submit to the Court. I did look at the contract form enough to ascertain that this information is available to a small manufacturer at a much lower cost, a much lower basic cost than the larger manufacturer. On the first page of that you will see that he grades up, a manufacturer having sales of less than

$500,000 can purchase the information for—I forget the exact figure, but I believe about a fifth as much as a manufacturer having sales of, lets say, $15,000,000 or more.

Once he compiles this information, let's say on bleach, he was compiling it for Purex, and probably other bleach manufacturers during that past history when Procter & Gamble was not buying it, but the information is available to anyone who wants to step up and buy the past history at any point. But he doesn't collect that past history just in hopes of making a sale at some future point. That's why it happened to be available.

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(Tr. p. 810)

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Q. However, during the period preceding an acquisition where $30,000,000.00 is going to be spent, the staff would be more prone to find out all possible details they could so their report to you would not backfire, would they not? A. We went on the information given to us by the Clorox Chemical Co. about their business, and our own accountants found out about their business, and the only information I think anyone looked at on Nielsen was the trend of the share

(Tr. p. 811)

of market, because that's all we really rely on, and the trend of the share of market shows the figure on share which represents movement from grocery stores to housewives.

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(The document referred to, heretofore marked for identification Commission's Exhibit 325, was received

(Tr. p. 812)

in evidence.)

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(Tr. p. 816)

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Q. The Clorox Company distributes all labels used on Clorox products, does it not, rather than the distributor placing the labels, themselves? A. The labels are placed on the bottles of Clorox at The Clorox plant. The distributor does not do that.

Q. And the same is true of advertisements placed in newspapers. They are placed by The Clorox Company and not by the distributor? A. That's correct.

Mr. Tincher: Mr. Reporter, I would like to have marked at this time as Commission's Exhibit Number 336, Page 17 of the Erie, Pennsylvania Times, Monday, November 25, 1957.

(The document referred to was marked Commission's Exhibit 336 for identification.)

By Mr. Tincher:

Q. Mr. Morgens, I hand you Commission's Exhibit Number 336 for identification, and refer you to the large ad of Clorox, and I'll ask you if that is not an ad of The Clorox Company? A. That's an ad of The Clorox Company.

Mr. Tincher: I offer the exhibit at this time, sir.

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(Tr. p. 817)

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Hearing Examiner Haycraft: Commission's Exhibit 336 for identification will be received in evidence.

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Howard Joseph Morgens—Direct

(Tr. p. 818)

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Q. Mr. Morgens: I will hand you Commission's Exhibits 337, 338 and 339 for identification and ask you if these are not labels put out by The Clorox Company for its products? A. These are labels put out by The Clorox Company for the products sold in two test markets, one Erie, Pennsylvania, and one Evansville, Indiana.

Mr. Tincher: All right, I'll offer the exhibits, sir.

Hearing Examiner Haycraft: Did you say it was put on about the same time as the newspaper ad, November, 1957? The other Exhibit, 336, does it support that, or about that

(Tr. p. 819)

time? See, they're undated.

The Witness: Well, if I could look at the newspaper advertisement.

Mr. Tincher: I think he should read them in conjunction with each other, sir.

Hearing Examiner Haycraft: That's what I thought. I am trying to get a date on them.

The Witness: I'm sure these labels were on the——

Hearing Examiner Haycraft: Containers?

The Witness: On the Clorox in the stores in Erie, and one other city, at the time the newspaper advertisement appeared.

I could give you background on that if I were asked.

Hearing Examiner Haycraft: Commission's Exhibits 337, 338 and 339 for identification will be received in evidence.

(The documents referred to, heretofore marked for identification Commission's Exhibits 337, 338 and 339, were received in evidence.)

By Mr. Tincher:

Q. I think you said in connection with these advertisements, sir, especially the newspaper ad that you were conducting a test market in Erie, Pennsylvania? A. That's correct.

(Tr. p. 820)

Q. As a matter of fact, sir, the Purex Company was trying to conduct a test market, were they not, when these advertisements appeared, with Clorox? A. That's correct.

Q. Mr. Morgens, it's kind of difficult to conduct a test, isn't it, when your competitor comes in while you're trying to test and does the same thing? A. Not at all. Would you like me to elaborate on that?

Q. Well, I think I'll let Mr. Royall have you elaborate on that.

Hearing Examiner Haycraft: I would be glad to have him elaborate on it.

Mr. Tincher: All right, sir.

Hearing Examiner Haycraft. Do it for me.

The Witness: The Purex Company entered Erie, Pennsylvania with some pretty heavy couponing. It was not in Erie, Pennsylvania prior to that. We understood that the Purex Company was using—we suspected the Purex Company was using that as a plan which they would later extend to a much broader area. We didn't want to lose our shirts on Clorox but we wanted to test a plan that would give some defensive measure of their attack if they later extended it. The Purex people certainly would not——

Hearing Examiner Haycraft: Let's not discuss what they would do. Let's find out what you did.

(Tr. p. 821)

The Witness: That's what we did.

By Mr. Tincher:

Q. Would you do the same, Mr. Morgens, to any other liquid bleach producer who hasn't been in an area and tries to get in? A. I don't know. We are not anxious to lose business. You can't—Any manufacturer, including Purex, that wants to get into a new area is going to get some business. And you try to—You can't prevent it. But you try to lose as little as you possibly can, obviously.

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(Tr. p. 822)

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Q. Do you consider a bleach producer trying to come into an area where he hasn't been an attack on Clorox?

Mr. Royall: Your Honor, I won't object to that question if you permit the witness to give a full answer.

Mr. Tincher: It might be very appropriate for him to give a full answer, sir, on that.

Mr. Royall: All right.

A. Any brand with a high share of market is very vulnerable. That's Number One. In anything like a free market, and this certainly is a free market.

We don't know of any brand that's been able to retain as high a share of market, our own included, over any period of time, when someone wants that business, is willing to enter a new field, or—when someone wants to enter new into the bleach business it is inevitable that we will lose some share.

We don't attempt to, it would be fruitless for us to spend the kind of money—it would be very unprofitable for us to spend the kind of money that would be necessary to attempt to retain that kind of share. But we look for the

kinds of promotions, and try to measure them in an experimental market, that might enable us to meet a situation of that kind

(Tr. p. 823)

in an economical way.

Q. Now, when you say that Clorox has been very successful in retaining its high market share, is it not a fact that Clorox Chemical Co. had been exposed to similar situations such as is represented by those coupons, where a competitor comes into the area and has a couponing deal, and Clorox Chemical Co. never came back, as The Clorox Company came back as set forth in those ads? A. Well, I am not saying we are as right in doing this as the Clorox Chemical Co. was, but I do say the only way we have to learn how right they were, or how right we are, is to experiment in a market. That's the learning process.

Q. You were already in the Erie, Pennsylvania market, were you not? A. Yes, but we have to experiment with meeting a competitive situation.

Q. The ads—I will show this to you, you may want to look at it—it says that the offer is limited to Erie County, Pennsylvania. Are you aware of that? A. I was aware there was a test in—Yes. That wouldn't be unusual

Q. And it is a fact, is it not, that that is the exact and identical area that the Purex Company was testing in? A. That's right. We were trying to test an action in a given market situation, where there was a certain competitive

(Tr. p. 824)

condition, and we thought—I will stop. I am sorry.

Q. Now, how about the Evansville, Indiana area, is that where you mentioned another test market? A.

Yes. I am not quite as clear on that one, but there was a special competitive situation of some kind, which I don't really recall.

Q. And who was the competitor in that instance, sir? A. I think it was Purex, also.

Q. Once again, were they trying to make a new entry into a market area they had not been selling in? A. They were spending on that type of promotion, couponing, it was very unusual, that type of expenditure, in that area.

Q. Then they had not been selling in that area before? A. I believe they had. I believe that was an area in which they were already marketing.

Hearing Examiner Haycraft: In both of these instances how long had they been in there with this special couponing?

The Witness: I can't answer that, in specific terms, your Honor.

By Mr. Tincher:

Q. Let me suggest, Mr. Morgens, to try to help answer the Examiner's question, that the Clorox ad came out within a matter of days, less than a week, after the Purex announcement

(Tr. p. 825)

was officially made? A. It was certainly a very short time. And I might say—I hesitate to elaborate here unduly, and if I do, you tell me, if I am out of order, because I am not familiar with these matters. But if we were making the move that Purex made we would welcome this kind of counter-action, so that we could ascertain what we would be up against if we went broadly, or what we might be up against.

I don't believe that we would assume that we could coupon broadly in a new area with the kind of advertising

and promotion expenditures they were spending in Erie without some retaliatory action, and it would be advantageous for us to measure what we were doing against a retaliatory action rather than in a vacuum.

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Hearing Examiner Haycraft: These are the only cities in which you made such a test?

The Witness: To my knowledge, that's correct, yes. In each case the market situation in those communities changed abruptly, and we were trying to find out how to meet that situation.

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(Tr. p. 827)

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Q. Mr. Morgens, I would like to return just a moment to this Erie County, Pennsylvania situation. When those price reductions that are shown in the ad were given, those were price reductions to the consumer, were they not? A. Yes, that's right.

Q. And they would buy it for seven cents, or five cents cheaper in the store? A. That's correct.

Q. Now, were any price concessions given to the dealers and distributors? A. No, there were not.

Q. They were receiving less money for the product, from the consumer?

(Tr. p. 828)

A. Well, let me make this clear; The merchandise was sold to the dealer at a lower price, the equivalent of what he could pass on to the consumer, if that's what you mean. But there was no special consideration to the dealers other than that. You can't persuade the dealer to sell at seven cents off, or five cents off, or three cents off, and have the amount come out of his pocket.

Q. So the ultimate loss of seven cents, five cents and three cents was borne by The Clorox Company? A. Yes.

Let me make it clear about that experiment, however: That doesn't involve any increase in Clorox expenditures for advertising or promotion. That's an experiment of a different way to spend—that has to come out of the newspaper, or some other area, or some other media, to determine if that is a more effective way to spend the Clorox money than the way the Clorox Company had been spending it. There is never any increase in expenditures because of this type of activity.

Q. Well, that restriction hasn't been placed on other P & G products, has it? A. By and large that is what we do. We are spending no more money on Clorox per unit than the old Clorox Co. spent, and the management has to determine—the Clorox management has to determine whether that type of expenditure is more effective

(Tr. p. 829)

than something else that The Clorox Company was doing.

Q. Yes, that's what you are doing, but my question is, sir, that restriction has not been placed on other P & G products? A. On products that aren't new, yes. On new products you haven't yet arrived at a budget, or a budget basis, or a going rate of expenditures. On your existing brands there is no new appropriation for a promotion.

Q. What distributor of The Clorox Company was involved in this Erie, Pennsylvania situation? A. I don't know his name.

Q. Would he be the one located closest to Erie geographically? A. I would assume he was, yes.

Q. Mr. Morgens, 70 per cent of the volume of the P & G household products comes from products which were not in existence 12 years ago, doesn't it, approximately? A. Approximately.

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(Tr. p. 830)

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Q. I think I asked you the other day, sir, if you recalled being interviewed by the Business Week people, at the time we put the cover off of Business Week in the record. A. Yes.

Q. I would like to ask you a question now, sir, concerning a statement which allegedly was made by yourself; and to meet any objection that has been made previously I will hand you the statement. You can use it to refresh your memory, or any other way you desire. You—

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By Mr. Tincher:

Q. And I will read to you the statement, sir, and ask you if it is correct:

"We intend to keep fighting for greater shares of the market for every product. Any time you think you can do otherwise the company starts to slip. Competition is still severe in these fields. If you stand still, you go down."

Now, I ask you, sir, if you are accurately quoted as having made that statement? A. I don't know whether I was accurately quoted or not, but I will say any time we don't keep fighting for greater share of market, we are in trouble; and I would like to elaborate on

(Tr. p. 831)

that by saying we have been fighting pretty hard for a greater share of, say, the packaged-soap market, for the

past five or six years, and we have lost share while we are fighting for a greater share.

Q. And you have been competing with Colgate-Palmolive-Peet and Lever Bros., have you not, sir? A. We have been competing with the whole industry.

Q. And you recognize that those two concerns have sales of at least $250,000,000 a year, do you not? A. I don't know what their sales are, but I assume it is in that range. But we are competing with far more than they. I am not sure that they have gained share of market in the last five or six years.

My point is that I think everybody—this statement could be made by anybody, large or small, in the industry—that they are fighting for a greater share. Whether they achieve it or not and are successful in winning it or not is quite a different matter than saying they are going to fight for it.

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(Tr. p. 840-A)

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Q. Mr. Morgens, the product Comet is sold by P & G's Case Goods salesmen, is it not? A. That's correct.

Q. And these salesmen were selling soaps and detergents, Spick and Span, prior to the introduction of Comet? A. That's correct.

Q. Now, can you tell us what P & G executives or high staff personnel have been transferred to the Clorox Company subsequent to the acquisition? A. Yes, I can.

There were three men transferred to The Clorox Company. One was Mr. Fred Brown, who became executive vice-president of The Clorox Company, and was the man who was the active manager of the business in San Francisco. He, in effect, handles the duties which Mr. Roth,

who was president of the old Clorox Co. handled. Mr. Roth was at an age where he wished to retire. He is not retired, in the sense that he is still a very active consultant to us, and he comes to the office every day; but, nevertheless, he doesn't have the heavy responsibility of the business on his shoulders anymore, in accordance with his wishes.

The other two gentlemen, one is Mr. Richard Oster, who is a young man, 33 or 34 years old, who was sent out, who has a marketing background, and is called staff associate for

(Tr. p. 840-B)

marketing, or maybe it is marketing staff association.

The other is a man named Rex Fink, who became staff associate for manufacturing. He has a manufacturing background.

Those last two men went in a staff capacity, advisory capacity. The main operating channels are directly from Fred Brown to the other officers of the company who are fulfilling the same function that they fulfilled under the old Clorox Chemical Co. management.

(Tr. p. 841)

* * * * *

Q. Do the distributors who sell Clorox sell other products, also? A. Most of them do. Maybe all of them do, but most of them do. I haven't made a detailed check.

Q. Are P & G salesmen allowed to sell any product that isn't a P & G product? A. No, they are not.

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(Tr. p. 842)

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Q. Now, can you tell us, sir, the profit area of the distributor? In other words, as I understand it he buys the

product from The Clorox Company, and then he sells it to the consumers—not to the consumers, but to the dealers, the grocers and others. A. Yes, he buys from The Clorox Company, the Clorox Company bills the distributors, the distributor sells that merchandise to the retail and wholesale outlets, in his area; he takes the credit risks, and he collects the money from the retailers and the wholesalers in his area.

The Clorox Company has only 88 customers, in fact.

Q. And the average profit for the distributor on Clorox is around seven percent, is it not?

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(Tr. p. 843)

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A. It is not as high as seven percent. It's between six and seven percent. I should know that figure. I think it is 6¼, but I really don't know.

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(Tr. p. 844)

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Q. Now, the distributor, then, has his own salesmen who call on the trade that sells Clorox as well as the other products of the distributor. Is that the way the Clorox gets to the selling level, the retail selling level? A. The distributor has his own salesmen, that is true, yes.

Q. Now, does The Procter & Gamble Company have a quantity discount price structure? A. For what?

Q. For its products. Let me explain what I mean. A system whereby purchaser of P & G products——

(Tr. p. 845)

Hearing Examiner Haycraft: Well, let's try to hold this down if we can. I've about crystallized in my mind

that the soap—or the grocery items, the soap products, or the Soap Division, soap, detergents and cleansers are sufficiently comparable in nature and all that to make a comparison of marketing practices. I've asked you to keep out of the drugs. But I do think you've demonstrated that your soap business, that is, the soaps, detergents and cleansers are sufficient.

Now, you may answer the question along that line with respect to those items, whether you have a quantity discount.

* * * * *

Go ahead, you may answer the question.

A. Yes, we have a quantity discount structure on soap.

By Mr. Tincher:

Q. And under that structure your retail grocer customers may lump together all different—the total amount they spend for each brand, and get a quantity discount on the total amount they spend for all P & G products, may they not?

(Tr. p. 846)

A. Yes.

Q. And has Clorox been included in that quantity discount? A. It has not.

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(Tr. p. 847)

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Q. Now, when you're selling a product and you use distributors rather than salesmen, you lose direct contact between yourself and the customer, do you not, as far as that product is concerned? A. I guess you could say you would, yes. You'd lose it in the sense of being direct. But you think of your distributor's salesmen in the sense

of working for you, and in that sense you don't lose contact.

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(Tr. p. 852)

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Q. Now, who in the P & G organization has charge of advertising with reference to Clorox? A. The advertising manager of The Clorox Company is this man whose name I forgot in Monday's testimony, Mr. Shaver.

Q. There's nobody in P & G that's supervising Mr. Shaver or checking on him or determining how he advertises? A. Mr. Shaver reports directly to Mr. Fred Brown who is executive vice president of The Clorox Company, and Mr. Brown reports directly to me.

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(Tr. p. 854)

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Mr. Tincher: Now let me mark for identification, please, as Commission's Exhibit Number 340 the February, 1958, edition of Good Housekeeping Magazine, and I assure the Examiner that I will tear out the pages I am concerned with.

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(Tr. p. 855)

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Mr. Royall: Your Honor, may I comment. This is, I think, the first piece of evidence that's been introduced covering a period since the institution of the proceeding. There may be others. If there were, they escaped my notice. What is your Honor's ruling as to——

Hearing Examiner Haycraft: Well, there's been considerable testimony. I take testimony right up to the time of the hearing.

Mr. Royall: The conclusion of the evidence?
Hearing Examiner Haycraft: Yes.

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(Tr. p. 862)

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By Mr. Tincher:

Q. Mr. Morgens, when you were telling us about this $50,000-a-year annual saving for newspaper advertisements by lumping together P & G products for discount rates, do you have reference to such an issue of a magazine as Commission's Exhibit 340 which you've been shown? A. In the first place, you mentioned newspaper advertisements. I'm sure you meant magazine advertisements.

Q. I beg your pardon. I did mean magazine, of course. A. I don't know whether there is a discount for a number of

(Tr. p. 863)

advertisements in a specific issue of Good Housekeeping. I know that there are discounts on magazine advertising in quantity, but they might be placed—might be discounts for the amount of advertising placed in the publication over the period of a year, for example.

Q. You do know that Good Housekeeping is one of the magazines that gives such discounts, though? A. No, I don't know that, but I know that the magazine advertising Clorox places now can be purchased for $50,000 a year less than would be the case if the old Clorox Chemical Company had placed that magazine advertising. That's all magazines——

Q. Right. A. ——over a period of a year.

* * * * *

Howard Joseph Morgens—Direct

(Tr. p. 865)

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Hearing Examiner Haycraft: If I've correctly understood the testimony, that isn't possible. Is it possible to make a saving on your Clorox by putting it in national advertising rather than in television?

The Witness: Well, I'd have to look at the specific—there's no——

Hearing Examiner Haycraft: You said it was the reverse.

The Witness: On talent there's no saving. On spots I am told that the smaller companies, including Clorox, can buy spots—spot television messages more cheaply than can Procter & Gamble. On programming—and maybe I'm going contrary to my own counsel's objections here——

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(Tr. p. 866)

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The Witness: The number of messages on an individual program doesn't make much difference, as I see it. For example, we share and a great many other advertisers share programs with other manufacturers. You can see that on television every night, that a cigarette company will advertise cigarettes on the opening commercial, and you might say somebody like Procter & Gamble could advertise its message on the closing commercial in that program. They have what they call alternate sponsors that sponsor between different companies. There's nothing that we do on television that I can see that the old Clorox Company couldn't have done.

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(Tr. p. 868)

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By Mr. Tincher:

Q. Mr. Morgens, inside P & G, advertising is something of a science tied closely to research and development and to production and marketing, is it not? A. Mr. Tincher, I wish it were.

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(Tr. p. 869)

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Q. Well, you say that it hasn't become a science. Let me ask you—— A. Oh, it's far from it. So far from it that I hardly

(Tr. p. 870)

know how to answer your question.

Q. Well, is that one of P & G's objectives to so tie in your advertising with the other divisions of the business as I indicated in my question? A. Well, it's our objective as it is any advertiser's objective to coordinate the various activities in the business, and it's certainly an effort we make to elimihate guesswork and the amount that you must rely on creative abilities and imagination, but I just wish we were that good. We're not.

Q. All right, sir. A. We make lots of mistakes, Mr. Tincher.

Q. Now, when you say you make lots of mistakes, sir, do you mean to tell me that occasionally you have campaigns where you'll spend a lot of money and still the product won't go over and you'll lose money? A. Each brand, let me repeat, is run as a separate business. We don't lose any money that we have to, but sometimes a brand curls up and dies, and we let it die rather than to lose money. And a lot of it is due to human error. I'm not too old in the business, but when I was selling soap I could

name, I imagine, ten brands that I was then selling which are dead today; they're just dead.

Hearing Examiner Haycraft: Isn't that due a great deal to the changing habits of the people?

(Tr. p. 871)

The Witness: Well——

Hearing Examiner Haycraft: They just don't use soap any more for laundry purposes? I mean bar soap?

The Witness: A lot of that is due to——

Hearing Examiner Haycraft: The invention of the automatic washer?

The Witness: Well, if we were skilled in predicting or scientific in predicting these changes, we could adjust our products and our advertising to the trends. We're not sufficiently skilled to do that.

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(Tr. p. 876)

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By Mr. Tincher:

Q. Mr. Morgens, in recent years the P & G Company has won awards, on two occasions, from the American Institute of Management, as the best-run company in the United States, hasn't it?

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A. Yes, we have.

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(Tr. p. 885)

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Q. Mr. Morgens, the sales pattern of household liquid bleach

(Tr. p. 886)

is higher in the spring and fall than the rest of the year, isn't it, for spring and fall housecleaning? A. We run spring and fall housecleaning promotions, as I understand it. I think the general pattern is that the sales tend to buck up in the summer months——

Hearing Examiner Haycraft: For deliveries in the fall?

A. (Continued) The sales seem to buck up in the summer because there are more white clothes worn in the summer and more frequently washed in the summer than they are in the winter. But the household part of it, the spring and fall housecleaning refers to its disinfectant use which has nothing to do with its use, of course, as in the washing machines.

By Mr. Tincher:

Q. Cleansers are also featured in the spring and fall housecleaning sales, are they not, sir?

Mr. Royall: I believe I object to that, your Honor.

Hearing Examiner Haycraft: Overruled.

A. Cleansers, or cleaners?

By Mr. Tincher:

Q. Cleansers, sir. A. Cleansers. Yes. Spring housecleaning, anything that is used to wash woodwork, floors and clean up a house generally is part of spring housecleaning time.

Q. That would include P & G's products Comet and Spic and Span,

(Tr. p. 887)

would it not, sir? A. That's right. I don't know whether we use those in our spring housecleaning plan or not, but it would seem a desirable time to do so.

* * * * *

The Witness: Your Honor, could I say something?

Just before lunch I suggested I'd like to check during the lunch hour on my statements about the distributor's organization and profit, and report back to you after lunch, and you gave me that privilege.

Hearing Examiner Haycraft: Yes.

The Witness: I'd like to say the distributor's profits are between six and seven percent based on a suggested selling price to the retail and wholesale trade.

I'd like to say further that although there is a suggested selling price, the distributor is in no way bound and there is no agreement in any way that he must sell at any particular price.

I would further like to say that is precisely the same plan as used by the old Clorox Chemical Co.

Hearing Examiner Haycraft: You haven't made any change.

(Tr. p. 888)

The Witness: We haven't made any change.

And if it's agreeable to you, there was so much discussion about the distributor organization I would like to say one other thing, if it's all right, and that is that we believe that this distributor setup we have is an excellent distribution system. We have no plans whatsoever for changing it. It has been successful. And we don't advance by tearing apart anything that has been as successful as that has. Our thoughts are more to build it rather than to change it in any way.

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By Mr. Tincher:

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Q. How many salesmen does P & G have altogether?

A. I'm sorry, I can't give you that figure either.

Q. Could you give us an approximation?

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(Tr. p. 889)

A. Something around 1800. It may be a little higher than that, but that is domestic.

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(Tr. p. 891)

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Q. Now, do customers of Clorox, do they receive advertising allowances or allowances for in-store promotions?

Hearing Examiner Haycraft: Do you mean retail?

Mr. Tincher: Yes, sir.

A. The Clorox Company has continued the same plan that was used by the Clorox Chemical Co., which is a payment for special featuring in newspaper, handbills, special positions in the store.

By Mr. Tincher:

Q. And does—Is that payment handled directly between the retail grocer and The Clorox Company, or is it handed down through the distributor, then down through the grocer? A. My understanding is it is passed on to the retailer by the distributor.

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(Tr. p. 892)

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Q. Comet does have a bleaching agent in it?

Hearing Examiner Haycraft: That's what it said, bleaching agent. I think it said chlorination, the word chlorination.

A. I can't quite pull the word out. I think it's perborate. Perborate bleach.

Chlorinated trisodium phosphate.

By Mr. Tincher:

Q. And is this the same thing that is in the Oxydol that has the bleach in it?

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(Tr. p. 893)

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A. I don't know what the technical term is for the type of bleach that is placed in Oxydol.

By Mr. Tincher:

Q. You just know there is a bleaching agent in Oxydol, in a certain type of Oxydol?

* * * * *

Hearing Examiner Haycraft: On the record.

His answer is no to the last question.

Now, go on and explain what kind of bleach it is, Mr. Morgens.

The Witness: It's a perborate bleach.

(Tr. p. 894)

By Mr. Tincher:

Q. Now, is what is known as a dry bleach a perborate bleach? A. My understanding of a dry bleach is there are several different kinds. Some of them are perborate; others are not.

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(Tr. pp. 897-898)

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Hearing Examiner Haycraft: On the record.

Commission's Exhibit 342 for identification, which has been offered in evidence, is a Procter & Gamble domestic advertising and sales promotion on all brands, and it is to be received in evidence, in camera.

(The document referred to, heretofore marked Commission's Exhibit 342 for identification, was received in evidence, IN CAMERA.)

(Tr. p. 920)

Courtroom No. 1, Room 805
United States Post Office and
Courthouse
Cincinnati, Ohio

February 6, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 922)

PROCEEDINGS

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(Tr. p. 945)

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Mr. Tincher: And, Mr. Examiner, I would like to have marked as Commission's Exhibit Number 348 for identification, and as A the front cover of November, 1956 issue of Moonbeams; and as Commission's Exhibit 348-B and C, and, also, sir, we would offer the reverse side of Commission's Exhibit 348-A. I have already assigned B and C——

Hearing Examiner Haycraft: You haven't given the page numbers.

Mr. Tincher: Oh, I beg your pardon. It's Pages 4 and 5, remarks by Mr. Dupree, chairman of the board.

Hearing Examiner Haycraft: And what do you want for D, then?

Mr. Tincher: The reverse of A, then.

Hearing Examiner Haycraft: Is that Page 1?

Mr. Tincher: It's Page 2, the inside page of the cover.

Hearing Examiner Haycraft: Page 2.

Mr. Tincher: Yes, sir.

(The document referred to was marked Commission's Exhibit 348-A, B, C and D for identification.)

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(Tr. p. 946)

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(The document referred to, heretofore marked for identification Commission's Exhibit 348-B, C and D, was received in evidence.)

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(Tr. p. 972)

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Mr. Deveny: 372-A through D.

(The documents referred to were marked Commission's Exhibit 372-A, B, C and D for identification.)

Hearing Examiner Haycraft: What's the date?

Mr. Deveny: This letter is dated July 6, 1956, entitled To Our Distributors, signed by Mr. Shaver, Advertising Manager, of whom we have heard before.

Hearing Examiner Haycraft: Commission's Exhibit 372-A to D will be received in evidence.

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(Tr. p. 973)

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Mr. Deveny: I would like to have marked for identification as Commission's Exhibit 374-A through C a letter

from the Clorox Chemical Co., dated July 20, 1956, signed by Mr. Shaver, directed to Gentlemen.

(The document referred to was marked Commission's Exhibit 374-A, B and C for identification.)

Hearing Examiner Haycraft: Well, there are a lot of gentlemen. Is it to the trade, or distributors, or whom?

Mr. Deveny: Apparently this, again is——

Hearing Examiner Haycraft: Promotional?

Mr. Deveny: A promotional piece going to the distributors. There is attached to this a suggestion for bulletin to be mailed by the distributor to the trade contacts,

(Tr. p. 974)

so I think that pretty well defines what the purpose is.

I would like to offer Exhibit 374 at this time.

Hearing Examiner Haycraft: Commission's Exhibit 374-A to C for identification is received in evidence.

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Mr. Deveny: Your Honor, I would like to turn now to another portion of Clorox Chemical Co.'s method of doing business. We have a series of letters, photostats thereof, from apparently two or three gentlemen that may have been salesmen with The Clorox Company, as I understand it, to Mr. Trimpe, Vice-President of the Clorox Chemical Co. These letters concern competitive information that the salesmen have noted while making trade contacts with distributors as set forth in the bodies of these letters. And, again, we've cut this down to a representative view.

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(Tr. p. 976)

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Hearing Examiner Haycraft: It depends on what it is to be used for, Mr. Royall.

I'd like to have counsel indicate what the purpose of this is.

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Mr. Deveny: I say to begin with we have to look at certain competitive elements in the market, the relative line of commerce. These are certainly firsthand reports, and firsthand details of what competitive elements and factors are taking place in the market prior to the acquisition. I think this is necessary to compare with the merchandising ability and experience of Procter & Gamble in order to determine what sort of a market setup and competitive elements are going to enter into the picture after the acquisition. And I think—I could be corrected—I imagine when we get to California we'll probably tie these things in a little more

(Tr. p. 977)

directly than they are now. We would like to have them in evidence at that time.

Hearing Examiner Haycraft: Well, if you're going to offer them in evidence to establish a fact as to the existence of a certain type of competition, they are, of course hearsay. They are the opinions, impressions of a group of salesmen based entirely upon what they in turn were told or what they observed.

* * * * *

Such letters sometimes are received in evidence in proceedings before the Federal Trade Commission and courts and anti-trust cases where you're trying to establish the effect that may grow out of a competitive practice, such as boycott, or something of that nature.

Mr. Royall: State of mind.

Hearing Examiner Haycraft: State of mind.

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(Tr. p. 978)

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Now, Procter & Gamble didn't create any state of mind. It isn't a Section II or III case. They bought a concern which was not even a competitor at the time they bought it. So there couldn't be any situation where a competitive effort put on by the respondent may have caused this thing to occur.

In other words, what I have in mind is suppose that Procter & Gamble had been in that industry, and had used methods to drive this competitor out, and then bought him out. Then you might have some evidence to show what Procter & Gamble had done in the industry. But Procter & Gamble wasn't even in that industry. They are going into the industry by the acquisition of this concern.

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(Tr. p. 1015)

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Mr. Royall:

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(Tr. p. 1016)

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We furnished the other day Exhibits 323 and 324 to counsel supporting the complaint with the thought that Mr. Morgens would be examined about them. In fact, 324 was not called for by the subpoena, but was given because that type of information had been suggested in another paragraph, but not sufficiently to cover this.

I want to call attention to your Honor, if he should be interested in reading any of the exhibits at this time, that Mr. Morgens was ready, and was previously stated to be

ready, to testify as to those exhibits, and is ready now if desired.

Hearing Examiner Haycraft: I assume those exhibits speak for themselves.

Mr. Royall: No, sir. I mean they do not quite speak for themselves, and I anticipated an examination. I, of course, could not examine him on them. But I want to show the Government Counsel that, although they didn't see fit, and they had that right, to call Mr. Morgens, we intend at the proper time to produce evidence explanatory of those documents and their background.

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(Tr. p. 1022)

Room 261
United States Post Office
Seventh & Mission Streets
San Francisco, California

April 14, 1958

Met, pursuant to adjournment, at 10 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 1024)

PROCEEDINGS

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(Tr. p. 1028)

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Fred A. Brown

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Give your full name to the Reporter.

The Witness: Fred A. Brown.

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(Tr. p. 1029)

DIRECT EXAMINATION

By Mr. Tincher:

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Q. Would you tell us your present position, sir? A. My present position is the Executive Vice-President of The Clorox Company, and I report directly to Mr. Morgens, the President of Procter & Gamble Company.

Q. How long have you held that position, sir? A. I came out here on August 4th last year, 1957.

Q. Approximately three days after the acquisition of The Clorox Chemical by Procter & Gamble? A. That's correct.

Q. What were you doing prior to your present job, sir? A. Well, I am in my forty-fifth year in the Procter & Gamble Company, and during all of that time my experience has been in the manufacturing end of the business.

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(Tr. p. 1031)

* * * *

Q. All right, sir. Now, as a manufacturing executive, what has been and what are your duties with The Clorox Company? A. My duties are, as the title indicates, the executive vice president, to be responsible to Mr. Morgens for the management of The Clorox Company.

Q. In all phases? A. In all phases of the business.

Q. Now, during your experience with Procter & Gamble from the manufacturing viewpoint have you been in

charge of the manufacture of soaps, detergents, and cleanser products? A. I have, yes, sir.

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(Tr. p. 1032)

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Q. Now, as an official in charge of manufacturing, is it one of your normal duties to see that manufacturing is conducted as efficiently as possible and that economics of operations takes place wherever possible? A. That's true.

Q. And is that one of the reasons you were placed in your present position with The Clorox Company, because of your experience? A. I don't think that was a major part of the decision, sir.

(Tr. p. 1033)

Q. It was only a minor part? A. Well, I really can't read the minds of the people who made the decision, but I would suspect that they thought it might be better to have an older man in this position. They maybe thought of other reasons, thought there would be other reasons, as to my being a proper person to come out here to manage the office or the business.

* * * * *

By Mr. Tincher:

Q. Now, if I may—— A. I will tell you why I say that, Mr. Tincher, because manufacturing in The Clorox Company is a relatively simple process as compared to the manufacture in the Procter & Gamble Company and that is the reason I say I don't think that was the major reason why I was selected to come out here.

Q. In other words, the manufacturing of liquid bleach is a very simple operation? A. The manufacture of liquid bleach is a simpler operation than soap.

Q. And quality control is much easier? A. Well, I think quality control is quality control in any field, and you have to do whatever you have to do to have the best product you want to make.

(Tr. p. 1034)

Q. Yes, sir. Now, in response to my question, though, quality control in liquid bleach is easier than quality control in soaps and detergents? A. Well, I think that is probably correct insofar as the manufacturing is less complicated, yes.

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(Tr. p. 1035)

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Q. I asked you if Mr. Morgens or anybody else at P & G set any policy or objectives for you, either sales goals or production, price, any type of thing, and you said no. So I think it would be logical to ask you if you are completely on your own in determining the production and the sales and the policies of The Clorox Company. A. Well, naturally Mr. Morgens looks to me for recommendations and as to what should be done in the best interests of furthering the business. And in his capacity as president I naturally consult with him about many of the major decisions that are made before putting them into effect. But he does look to the management of The Clorox Company to be completely responsible for the volume of the business, the profits of the business, and all of the areas of the business that con-

(Tr. p. 1036)

tribute to that.

* * * * *

Q. All right, sir. Now, at the staff level what personnel have you been provided with from the P & G Company to

help in The Clorox Company? A. I brought out with me at the time I came a man, Mr. Dick Oster, Richard Oster.

Hearing Examiner Haycraft: How do you spell that?

The Witness: O-s-t-e-r. Mr. Oster's present position is marketing staff associate. He has no line responsibility in the organization, but he reports directly to me.

I also brought out a man by the name of Rex Fink, whose position is manufacturing staff associate, and he also has no line responsibility but is directly responsible to me.

We also brought in a man by the name of Melrose who has responsibility for the chemical side, that is, the laboratory controls and the things that have to do with the

(Tr. p. 1037)

technical side of the business. We have—that is all that I brought out at the time of the acquisition. Those were the only three people that came into the company at that time.

By Mr. Tincher:

Q. All right. So that was around August 3rd when he came? A. That's right.

Q. How about from August 3rd to the present time? A. The only man that has been added, a Procter & Gamble man, as I recall, is Mr. William Young, who was in the sales department of the Procter & Gamble Company. The Clorox Company for some time past has been creating sales divisions in their organization. They had an objective of five divisions. At the time I came out here only two of those positions had been filled. We have since filled the other three positions and now have five division, sales divisions, each with a division sales manager, each headed by a division sales manager, and one of those men

was a Procter & Gamble man who was the district manager of the San Francisco District Office, who was made available to me to fill one of the five division sales positions.

Q. That is Mr. Young? A. Mr. Young, Mr. William Young.

Q. What division does he head up? A. He is in the Pacific Coast Division.

Q. You spoke of five divisions. You mean five geographical?

(Tr. p. 1038)

A. Five geographical divisions. Would you like me to name those?

Q. Yes, why don't you while we are on the point. A. Well, we have an Eastern Division, a Central Division, a Southeastern Division, a Southwestern Division, and a Pacific Coast Division.

Q. I take it Mr. Young is one of those five? A. He is one of those five division managers.

Q. Now, what are his duties and responsibilities? A. Well, he has the same duties and responsibilities of all five of the division sales managers, and he works with the distributors in a sort of auditing capacity as to how they are promoting the brand Clorox to be—he endeavors to be helpful in suggesting to them whatever might be helpful in the furtherance of the brand at the retail level. But it is all in a rather advisory capacity, and we, of course, don't get into the actual running of the distributors' business. It's strictly their business. But we do try to be helpful in advising them where we can and where we think it will be of benefit to the Clorox business.

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(Tr. p. 1040)

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Hearing Examiner Haycraft: The sales managers you are talking about, each one of them has salesmen under him, or is he the only one?

The Witness: He is the only one. The retail salesmen are all employees of the distributors, not of Procter & Gamble Company.

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(Tr. p. 1042)

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By Mr. Tincher:

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Q. Let's return to Mr. Oster. What was his background with the Procter & Gamble Company? A. It was all in the advertising end of the business.

Q. And what products especially, or was it just general? A. I am sorry, I am not quite clear on that. I think he was what they call a Division Brand Manager. Under him were, he was responsible for, several brands. I happen to remember that at one time, I think that Tide was one of his brands.

Q. Was he one of the persons who were originally in charge of the introduction of Tide when it first came out?

(Tr. p. 1043)

A. I can't answer that. I don't know.

Q. How long has he been with the company? A. Approximately ten years

Q. Now, the same question as to Mr. Fink. A. Mr. Fink, all of his experience was in manufacturing prior to his coming out here. He worked in various chemical work, as a Chemical Supervisor in the factory, and as a production Supervisor, and his last position with the company was as, he was the Chemical Engineer of the Ivorydale factory at Ivorydale, Ohio.

Q. What is produced at that factory, sir? A. Oh, most of the products manufactured by the Procter & Gamble Company, soap and edible products. It does not include, of course, some of the products of the later acquisitions.

Q. Has the manufacturing personnel of the old Clorox Chemical Company been retained? A. All of them, without exception.

Q. The same, sir, for the sales personnel? A. That is true.

Q. The same for the advertising personnel? A. That is correct.

Q. The same advertising agency? A. The same advertising agency.

Q. Any changes at all that you can think of?

(Tr. p. 1044)

A. That have been made?

Q. Yes, sir. A. Mr. Wolford, the Executive Vice-President of the old company, retired at the time I came out here, and that had been planned before the acquisition, his retirement. He had reached retirement age before the acquisition. He was the Executive Vice-President. And I am sure that you know that Mr. Roth, who was the President prior to my coming out, is now in a consulting capacity and not active in the business; but he is in the office every day for consultation.

Q. Except since he has become sick, of course? A. That is right; except his illness, and of course when he is away on vacation.

Q. And that is about all changes that you can think of? A. Those are the only changes, Mr. Tincher, that I can recall.

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(Tr. p. 1045)

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Q. All right, sir. Has there been any change in the manufacture, either in the location, in the amount or the technique of manufacture? Those are three separate questions, if you want to consider them as such. A. Do you want to take them one at a time, Mr. Tincher?

Q. Yes. A. In the location, the Seattle plant was disposed of by the Clorox Company before the acquisition. We have closed the Clorox plant that was located in the Kansas City, Missouri, location, and that production is now being manufactured in the Kansas City plant of the Procter & Gamble Company.

(Tr. p. 1046)

I might expand on that for a minute, if you will permit me to. We happened to have in the Kansas City area, and within the confines of the Procter & Gamble property lines, a building that was not being used and was suitable for the manufacture of Clorox, and it seemed to us that it would be a wise thing to do, to rather than manufacture, have two plants operating in the same area, to combine that production into the one plant.

Q. What happened to the old plant there at Kansas City, sir? A. It is closed down and is vacant.

Q. Has it been sold? A. No.

Q. Do you know whether or not it is going to be used by the Procter & Gamble Company to manufacture private labels of chlorine bleach? A. It wasn't, it has not been, used up to this time, and I know of no plans for it to be used.

Q. All right, sir. Continue. A. We also closed down the Boston plant. We did that because, I am told, at the time that plant was built it was in the thinking of the old

Clorox Chemical Company that if and when the distribution of Clorox were expanded in the eastern part of Canada, that that territory would be supplied by the Boston area. That did not develop and we had ample facilities in the Jersey City factory for supplying that area,

(Tr. p. 1047)

and it was the judgment at the time, our judgment at the time, it was quite likely that that territory could be supplied more economically—I am talking about the Boston territory—from the Jersey City plant than by supplying it from two plants—I mean supplying the whole eastern territory from those two plants. Well, I will have to correct that. I don't mean the whole eastern territory; I mean the territory that was normally the Jersey City plant territory and the Boston territory. Our experience, however, has told us that that judgment was wrong, and the Boston plant is now being reactivated and is getting back into production.

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(Tr. p. 1049)

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By Mr. Tincher:

Q. Now, is the Clorox Company giving 6¢ per case allowance at the present time? A. Yes. We give universally what we call a D.C.M. allowance to all our distributors.

Hearing Examiner Haycraft: What does D.C.M. mean?

(Tr. p. 1050)

The Witness: Dealers' Cooperative Merchandising.

By Mr. Tincher:

Q. And is the Clorox advertising being handled on a nationwide basis by the company rather than the distribu-

tors handling it? A. Well, excepting for the advertising that comes under the D.C.M. allowance, if you call that advertising, the plans of the Honig-Cooper—the plans of the advertising is all handled by the Honig-Cooper Agency, and they have recently acquired the Miner Company of Los Angeles. I have been told they have been the old agent of the Clorox Company since 1925.

Q. Now, does the Clorox Company equalize freight costs, or does the company charge the actual freight to its distributors? A. National distribution is a uniform pricing structure which includes a uniform freight.

Q. So all distributors pay the Clorox Company the same amount for the bleach they buy? A. The list price is the same to all distributors.

Hearing Examiner Haycraft: Delivered price?

The Witness: Beg your pardon?

Hearing Examiner Haycraft: Delivered price, to their door?

The Witness: Yes, it is a delivered price to the

(Tr. p. 1051)

distributor, and then the Clorox Company also pays the freight to the warehouse of the chain and to the wholesaler's warehouse, but we do not pay the freight beyond the warehousing freight to the retailer, the retail store.

By Mr. Tincher:

Q. And then are the distributors supposed to suggest retail sales prices to their customers so you have a uniform national Clorox price?

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A. We sell to our distributors at a uniform price and suggest to the distributors a resale price.

Hearing Examiner Haycraft: And that is uniform also?
The Witness: That is uniform.

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(Tr. p. 1052)

By Mr. Tincher:

Q. What is the current suggested retail price for the Clorox bleaches in pints, quarts, gallons and half gallons, sir? A. Well, I can quote you our price to the distributors. I am not sure I can quote you the suggested resale prices. On quarts our price to the distributor is $1.79, and we suggest a resale price of $1.91. Now, that is our major size. I don't try to remember the other sizes, and I don't want to quote them because I am not sure of them. I can tell you our price to the distributor in every case if you want that.

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(Tr. p. 1053)

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Q. All right. What effort is made to see that that is the price at which they sell it? A. Certainly it is our policy and our desire that they sell at that suggested price.

Q. And how do you implement that policy and carry it out? A. Well, we haven't had any need to do so.

Q. They have automatically done it? A. That's right. I know of no cases since my coming, with Clorox, of any difficulty in that area. There has been no case where we have had to do any urging on the point.

Q. I take it, then, the distributors have been most cooperative. A. Very cooperative.

Q. And the difference between $1.91 and the $1.79, does that represent the distributor's profit margin? A. Well, there are also discounts, Mr. Tincher, both quantity and cash discount.

Q. To the distributor? A. To the distributor, which he passes on to his direct buyers.

Q. Does he pass them on entirely, or do you know? A. To the best of my knowledge, entirely.

(Tr. p. 1054)

Q. All right, sir. I take it approximately the same difference between your price to the distributor and the suggested sales price by the distributor would prevail on the other sizes of Clorox? A. Approximately.

Q. Now, do you have a suggested retail price for this bleach, and by that I mean—— A. All the relations with the retail level are in the hands of the distributors. The distributors take title. We have 84 customers in the United States, and they are all our distributors. We sell our products to them. They pay us for them and take title to the goods and from there on they have their relations with the trade.

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(Tr. p. 1056)

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Q. Have there been any price increases to the distributor this year, sir?

(Tr. p. 1057)

A. Not this year, no, sir. You are talking of this calendar year?

Q. Right. 1958.

Does The Clorox Company still allow its distributors a 2 per cent cash discount? A. That's correct.

Q. Are you familiar, sir, with the sale of liquid bleach in Erie, Pennsylvania, during November and December of 1957? A. I have some very general knowledge of it, yes, sir.

Q. You are aware that clorox liquid bleach was offered at that time at three, five, and seven cents off on quarts, half gallons and gallons respectively? A. I am.

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(Tr. p. 1058)

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Q. Mr. Brown, let me hand you what we have marked as Commission's Exhibit 395 for identification, and I will ask you—well, at the same time I will show you Commission's Exhibits 337, 338, and 339, and I will tell you that Mr. Morgens testified that these were used in Erie, Pennsylvania.

Mr. Royall: What are the numbers of those?

Mr. Tincher: 338, 337, and 339.

By Mr. Tincher:

Q. Mr. Morgens has testified that these three were used in Erie, Pennsylvania. I will ask you if the exhibit I have just given you, 395, was not used in conjunction with these three. A. I can identify the labels as having been used, Mr. Tincher, but I have not seen this detail of the display promotion.

Q. Do you recognize—— A. I would imagine it's probably correct that this was used, but I haven't—I really didn't see it before it was used. I didn't get into that much detail with the promotion. But I can identify the label.

(Tr. p. 1059)

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Q. Now, Mr. Brown, may I ask you whose decision it was to lower the price of clorox bleach in Erie, Pennsylvania, by three, five, and seven cents on the respective size bottles? A. Well, it was really the decision of our management

(Tr. p. 1060)

committee of The Clorox Company.

Q. And who is that, sir? A. That consists of the four operating vice presidents: Messrs. Montgomery, in charge of manufacturing, vice president in charge of manufacturing, rather; Towers, treasurer; Trimpe, sales; and Matson, traffic; Mr. Oster, Mr. Fink, myself and Mr. Roth is an ex-officio member.

Q. Are any of the gentlemen present in the courtroom today? A. Yes. Mr. Matson and Mr. Towers are present.

Q. Now, I take it you had a meeting, then, of the committee? A. It came up at one of our regular management meetings as an item.

Q. And that's where the decision was made? A. That's right.

Q. Now, how about the same question with reference to Evansville, Indiana? A. The same procedure applied to that.

Q. And where else has that procedure been used? A. Well, in anything that effects the price of the product, that has to be approved by the management committee of The Clorox Company.

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(Tr. p. 1061)

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Q. Where else have the three, five, and seven cents off on the different size bottles been used, besides Erie and Evansville? A. The Evansville promotion was only two, four, six cents off, not a three, five, seven. And those are the only two markets up to this time where the price off label has been used, sir.

Q. Now, why was it two, four, and six in Evansville as contrasted to three, five, and seven in Erie? A. Those were both what you might call testing or experimental markets, and we were trying to find out how we could best defend the position of our brand in the markets.

Q. "Defend" you say? A. Yes.

Q. Yes, sir. Now, why, though, was it a different price in Evansville than in Erie? A. I say it was an experimental market. Both of those markets were. In one case we wanted to test the use of the three, five, seven cents off label, and in the other market we wondered if two, four, six, might be as effective, and we were trying to find that out.

(Tr. p. 1062)

Q. And what were you defending yourself against in Evansville, sir? A. The promotional activities of the competitor.

Q. What competitor was that? A. Purex.

Q. What competitor was it in Erie? A. Purex.

Q. Was the competitor doing the same thing in Erie that he was in Evansville? A. No. In Erie he had—he distributed very widely a coupon. As I remember it, it was redeemable at 10 cents per bottle on all sizes, and then there was a coupon, as I remember, of 25 cents redeemable on the gallon size. And he did not have a coupon in the Evansville promotion.

Q. What was he offering in Evansville? A. It was—in the first place, they were introducing a new design bottle in both of those markets. They had stepped up advertising, both in newspaper and cut in on national network television shows, a rather elaborate brochure delineating the advantages of the new design bottle, and that was substantially their effort in those markets.

Q. Now, this cutting in on a national TV show, you mean a local cut in by a local TV station during a national program? A. That's my understanding of how it works, Mr. Tincher.

Hearing Examiner Haycraft: Did you say there was a

(Tr. p. 1063)

price concession in Evansville?

The Witness: We had a—you mean by Clorox?

Hearing Examiner Haycraft: By Purex.

The Witness: No, there was no price concession. As a matter of fact, in some of the original markets where they introduced their new bottle they actually raised their prices.

By Mr. Tincher:

Q. Then brought them right back down, didn't they, sir? A. They didn't—I didn't think they did it right away. I think recently they have been tending to bring the prices down, that's my—— .

Q. Now, Purex was also conducting experiments in Wichita, Kansas, and Louisville, Kentucky, of the same nature they were conducting at Evansville, Indiana, were they not? A. That's right.

Q. What did Clorox do in those two situations? A. We stepped up our advertising media to meet their advertising levels on those two markets.

Q. To meet their advertising levels, you say? A. Yes.

Q. And how do you know what their level was? A. Well, we know how many newspaper advertisements they run. They used—your distributor gets that information from the trade as to what your competitor has told the retailer he is going to do, and you have various ways of getting that knowledge.

(Tr. p. 1064)

Q. Now, was there any premium offered in Wichita and Louisville? A. By whom?

Q. By Clorox. A. No, we had no reduction in price in those areas.

Q. All you had, as I take it, was an advertising campaign; no price differentials whatsoever? A. That's right.

Q. Are you familiar with the premium of an apron that has been given away by The Clorox Company, sir? A. An apron?

Q. Yes, sir. A. No, I am not, sir. I know about an ironing board cover, a self-liquidating premium. And I know about a plastic laundry bag, but I don't know about an apron.

Q. All right, sir. The ones you do know about, what areas were they used in? A. Well, the self-liquidating ironing board cover was used in the southeastern territory, southeastern part of the country; and as I now recall it, I think recently we have used that same promotional device in the Erie market.

Hearing Examiner Haycraft: I am interested in having a definition of this self-liquidating, What do you mean by that? It disappears?

The Witness: Well, let me explain that, your Honor.

(Tr. p. 1065)

I will try to explain it.

We give a redeemable coupon. In the case of the ironing board cover, as I remember it, it was something like 50 cents value. The housewife can redeem that at the retail store and get an item that may be worth a dollar if she bought it at a retail store.

Hearing Examiner Haycraft: She gets it for 50 cents?

The Witness: She gets it for 50 cents, that's right, which is a quantity somewhere near the quantity cost that we buy it for because of the volume.

Hearing Examiner Haycraft: By "self liquidation" do you mean that it doesn't cost you anything?

The Witness: That's right. But it's a good value for the consumer.

Hearing Examiner Haycraft: Go ahead, Mr. Tincher.

By Mr. Tincher:

Q. All right, sir. Now, what other types of promotions have been used by The Clorox Company? A. You mean since the acquisition?

Q. Yes. The Clorox Company. A. The Clorox Company, all right. Well, we continue to use the fall and spring house cleaning promotion that was used by the old Clorox Chemical Company. We have added to that in this present campaign another self-liquidating premium, which is a plastic laundry bag that's tied in there with the spring house cleaning promotion.

(Tr. p. 1066)

Q. And what is the represented value of this bag, sir? A. It would retail somewhere normally between 75 and 85 cents, and it is redeemable with a 35 cent coupon. We talked about the self-liquidating ironing board cover. We have a test market in the eastern part of Texas whereby we are testing the transfer of newspaper promotion to television to see whether or not we can better spend our advertising dollars with more television than the newspaper advertising. Those are the only ones I can remember that we have used, Mr. Tincher.

Q. Who is thinking up the test market areas in these promotions, sir? A. Clorox Company organization.

Q. Is there any supervision over them by the Procter & Gamble Company as to how many or how expensive these promotions can be? A. No supervision, no.

Q. You are entirely on your own? A. There may be some consultation, which I think is quite natural, in drawing on the experience of the Procter & Gamble Company, but there is no supervision.

Q. Do you have knowledge of coupons for Procter & Gamble products being given with Clorox? A. I have no knowledge, no, of such an arrangement.

Q. Would you have knowledge if such a thing occurred?

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(Tr. p. 1067)

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A. I have no knowledge of it, and I think I would have knowledge of it if it had happened.

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Q. In addition to the discounts we have previously discussed, does Clorox give a three per cent discount on truckload shipments of Clorox? A. No. A two percent discount on truckload shipments, Mr. Tincher.

(Tr. p. 1068)

Hearing Examiner Haycraft: Is that on carloads also?

The Witness: Yes, Mr. Examiner, it is really on a case basis. Normally a truckload is 750 cases, or a carload, although we have some remote areas that might run as high as 1200, where there is a long haul. And the one per cent discount on half truckloads is generally the custom, on 375 cases, but we have some areas where it might be as low as 225 cases.

Fred A. Brown—Direct

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(Tr. p. 1069)

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By Mr. Tincher:

Q. Mr. Brown, returning to the testimony you gave concerning the Kansas City plant of The Clorox Chemical Company, now The Clorox Company, was the equipment from the old Clorox Chemical Company plant removed and placed in the new Clorox Company plant, or was new equipment purchased? A. The equipment of the old Clorox Company——

Hearing Examiner Haycraft: Chemical Company, wasn't it?

The Witness: Well, at the time it was moved it was the company.

Hearing Examiner Haycraft: I see.

The Witness: After the acquisition.

Hearing Examiner Haycraft: All right.

A. (Continuing) ——was sold to the Procter & Gamble Company and installed in the plant within the boundaries of the Procter & Gamble property.

By Mr. Tincher:

Q. So that included all the equipment and machinery necessary to make liquid bleach?

(Tr. p. 1070)

A. Well, that is a rather sweeping statement. There may have been one or two storage tanks added that were thought to be necessary in the new location, but in general, yes, that is a correct statement, Mr. Tincher.

Q. All right. Is The Clorox Company producing liquid bleach at full capacity at any or all of its plants, and you

may have to obviously give an explanation for that answer. A. In some of its plants it is producing—I can't give you the detail of it—it is producing at full capacity. If you limit it to one shift, however, you don't get that capacity. If you do not, you can get more production.

Q. I take it all the factories are working full time at one shift? A. No, I can't say that is true. There are some factories where the capacities of one automatic line, of one shift, is more than the production of the plant, and we tend to regulate that by using fewer people and running the machinery slower to get out whatever the production schedule requires.

Q. Have there been any changes made in the machinery since the acquisitions? A. It was fully——

Q. Or was it automatic? A. It was fully automatic when we got it, Mr. Tincher.

Hearing Examiner Haycraft: In this Kansas City situation, the Clorox that is being manufactured in Kansas City

(Tr. p. 1071)

is being manufactured by Procter & Gamble and not by Clorox?

The Witness: Yes. In effect, it is this, your Honor: It is being manufactured by the Procter & Gamble labor which, you might say, we rent from Procter & Gamble. The superintendent—there is a manager of the old Clorox Chemical Company in Kansas City, and he is located in the Procter & Gamble factory and is responsible to Mr. Montgomery, the vice president in charge of the manufacture at the Clorox plant located in Oakland. They know that the process is carried out so that we wind up with a product, the quality of which is satisfactory to The Clorox Company, and we pay Procter & Gamble toll charge for

converting the raw materials into finished products. We pay them their costs plus a toll charge for converting the raw materials into finished products.

Hearing Examiner Haycraft: And the handling of that is the same as in the manufacturing itself?

The Witness: Practically.

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(Tr. p. 1072)

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By Mr. Tincher:

Q. Mr. Brown, has the management of the Clorox Company held any discussions or any meetings concerning private brand bleaches?

(Tr. p. 1073)

A. There have been, if I remember, one or two cases where we were asked if we would be interested in having private label bleaches or brand bleaches, and we said we were not.

Q. Why not? A. Because we didn't want to get into competition with ourselves, you might say.

Q. Is that the company's own bleach and private brand bleach for others? A. It could be.

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(Tr. p. 1075)

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By Mr. Tincher:

Q. No. 1, sir: Does the Clorox Company have in its plans, or is the Clorox Company considering the erection of new production facilities? A. You mean new locations?

Q. Right, or increased capacity or size of existing locations.

Earl M. Matson—Direct

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A. So far as new locations are concerned, we are continually studying the possible advantages of having new facilities and new locations. But we only spend the money for them if they are economically justified. But those studies are continually going on. Now we have no plans,

(Tr. p. 1076)

no immediate plans, for increasing the manufacturing capacities in existing plants.

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(Tr. p. 1123)

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Room 261,
United States Post Office,
Seventh & Mission Streets,
San Francisco, California.

April 15, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 1125)

PROCEEDINGS

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Earl M. Matson

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Your full name and address?

The Witness: Earl M. Matson, 1135 Camino Vallecito, Lafayette.

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By Mr. Tincher:

Q. Would you state for the record your present occupation? A. I am Vice-President of Traffic for the Clorox Company.

Q. How long have you held that position? A. Since August 1st, 1957.

Q. And prior to that date what was your occupation? A. I was Vice-President and Secretary with Clorox Chemical

(Tr. p. 1126)

Company.

Q. In that capacity, what did your duties consist of? A. My duties were principally transportation, or the handling of traffic, for the Clorox Chemical Company.

Q. And the same question with respect to the Clorox Company. A. Practically the same work as I am doing now.

Q. As Secretary of the Clorox Chemical Company, did you have the normal duties of a corporate Secretary?

* * * * *

A. Well, my duties, I would say, were not what a normal Secretary of a corporation would perform, because those duties were performed by our Legal Department, or our attorneys. I handled such matters as inquiries from stockholders and exchanges or transfers of their stock, matters of that nature. But the making of notices or proxy statements to the stockholders was performed by our legal service.

Hearing Examiner Haycraft: You didn't keep the minutes, either?

The Witness: Our attorneys kept the minutes.

By Mr. Tincher:

Q. Who was that primarily, Mr. Feigenbaum? A. Mr. Feigenbaum, yes.

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(Tr. p. 1147)

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By Mr. Tincher:

Q. Let me now show you Commission's Exhibit No. 13, sir, and refer you there to Page 3, which has previously been identified as——

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(Tr. p. 1148)

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Mr. Tincher: 13.

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By Mr. Tincher:

Q. Let me refer you to Page 3 on that document, sir, to the bottom of the page—let me refer you to the earned surplus, which you will note down at the bottom, and let me ask you if that amount was in cash. A. In cash?

Q. Yes, sir. A. No, sir.

Q. How was it distributed?

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(Tr. p. 1149)

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A. That is represented by cash, goods, equipment, buildings, anything.

By Mr. Tincher:

Q. All right, sir. Can you tell how much of that amount is cash?

* * * * *

A. Actually the company carries a revolving cash, and after we have paid our bills for the month it would be way down, and when we receive our payments it would be way up. So we might have a million dollars on hand sometimes.

By Mr. Tincher:

Q. Well, let me ask you, the actual cash on hand is reflected earlier in this document, is it not? A. Yes.

* * * * *

A. The balance sheet shows $390,000 on July 31.

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(Tr. p. 1153)

The Witness: Well, while the balance sheet shows $390,000 cash, there is over $4 million in Government Bonds that are readily convertible to cash on the balance sheet.

By Mr. Tincher:

Q. Which also shows on the balance sheet? A. Yes.

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(Tr. p. 1156)

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Q. Mr. Matson, can you tell us how many bottles are in a case of liquid bleach by pints, quarts, halves and gallons? A. Yes, sir.

Q. Can you tell us what that is? A. There are 24 pints; there are 12 quarts; there are 6 half gallons; there are 4 gallons to the case.

Q. And that has been true at least from 1955 or 1954 on? A. It has been true since the history of the business.

Q. All right, sir.

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(Tr. p. 1157)

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Q. Mr. Matson, I will hand you Commission's Exhibit No. 27.

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Q. And refer you to Roman numeral nine. It is the agreement of purchase between the Clorox Company and Procter & Gamble, and I will ask you with reference to Roman numeral nine what the research contract there described involves.

* * * * *

A. We had a contract with Stanford Research to work out a project. They brought clothing for—I forget how many families; maybe a dozen, but they furnished these families with shirts, underwear, sheets, towels, and they laundered these articles weekly with Clorox, with other bleaches, and with different soaps or detergents to make a determination as to the superiority of Clorox in the laundry process. That project went on for more than a year and was the chief project which Stanford Research undertook for us. They may have done some other minor work of which I was not too familiar, but that was the chief project.

(Tr. p. 1158)

Q. What was the basic objective or purpose of the project, sir?

Hearing Examiner Haycraft: He stated it, to demonstrate the superiority of Clorox.

Is that right?

The Witness: That is right.

By Mr. Tincher:

Q. Did the project so demonstrate? A. Yes, it did.

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(Tr. p. 1159)

Q. From the period, let us say, 1952 through August 1, 1957, was the Clorox Chemical Company offered for sale to any other concern? A. No, sir. We never offered it to anyone.

Q. Did anybody else try to buy it? A. Now, this is only hearsay, but I have been told that different companies made inquiry, and——

Hearing Examiner Haycraft: Told by whom?

The Witness: They made inquiry——

Hearing Examiner Haycraft: I say, told by whom?

The Witness: Well, by Mr. Feigenbaum. They were told that different concerns had made inquiry if the company was for sale.

Hearing Examiner Haycraft: You had better get Mr. Feigenbaum for that.

Mr. Tincher: Yes; we have him subpoenaed.

A. (Continuing) Those inquiries were generally answered "No."

By Mr. Tincher:

Q. By yourself, sir? A. No.

Q. By your office? A. By Mr. Feigenbaum.

Q. So you have no independent knowledge of your own? A. I don't know, no.

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(Tr. p. 1161)

Q. Are you familiar with the price structure and the discount structure of The Clorox Chemical Company and The Clorox Company? A. Yes, I am familiar with the structure.

Q. Now, both before and after the acquisition, has the Clorox suggested retail price been made to the distributors by the company? A. Did you say retail?

Hearing Examiner Haycraft: Yes, retail.

By Mr. Tincher:

Q. Yes, sir, suggested retail price.

Hearing Examiner Haycraft: To the consumer, you mean?

Mr. Tincher: Right, sir.

A. Well, we never made any suggested retail prices. We suggested a resale price to our distributor at which he would sell to the jobber or chain store. But we never made any suggested retail prices.

By Mr. Tincher:

Q. Well, that was true both before and after the acquisition? A. Yes, sir.

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(Tr. p. 1163)

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Q. Mr. Matson, how long have you been with The Clorox Company? A. Since May 6, 1929.

Q. Are you familiar with the facts or whether it is a fact that in 1930 The Clorox Company gave away a free pint of Clorox as a sample to induce sales? A. Yes, sir, I am familiar with that offering, that introductory deal.

Q. And from that time in 1930 to 1957, August 1, were any free samples ever given by The Clorox Company? A. Yes. They gave away many free samples. We had deals of maybe 50 cents per case and 25 cents per case, and we gave away samples at cooking schools in which we parti-

(Tr. p. 1164)

cipated quite extensively at that time, and we participated in a cradle car service, I guess for many years, and we still do, I guess.

Hearing Examiner Haycraft: What is a cradle car service?

The Witness: Well, a nurse calls on a young housewife who has just become a mother and gives her a free bottle of Clorox, among other things, and gives her some instructions on how to care for the baby, and so forth; they call it cradle car.

Hearing Examiner Haycraft: She handles other products besides your product?

The Witness: Yes, that's right.

And we have had some deals in Los Angeles in 1949, I think.

* * * * * *

Q. Did that involve free samples? A. Yes. I am sure it involved couponing and a deal to the jobber and retailer.

Q. All right, sir. Now, I would like to ask you some questions concerning the period 1952 to August 1, 1957. The first question is: During that period did the company, The Clorox Chemical Company——

(Tr. p. 1165)

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Q. During that period did The Clorox Chemical Company give free samples to the consuming public, either by mail or by door-to-door distribution? A. Well, they gave free samples by distribution through a bride's book, which is a book given to couples when they apply for a marriage license. In that book there is a coupon entitling them to a bottle of Clorox. We still participate in that.

Q. Was that a nationwide undertaking? A. No. I think it covers the—I don't remember now. It used to be the eleven western states, but it may be more extensive today.

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(Tr. p. 1166)

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Q. Was this a book for brides published by Clorox or by an independent company? A. By an independent company.

Q. You participated in it? A. We participated in it.

Q. Did you get free advertising in the book or any place else? A. I can't say.

Q. My question is: Does that complete your answer to my question? Is that the only instance you can think of in that period? A. Well, we continued to participate in cooking schools and giveaway samples—in cooking schools and—oh, I don't know. There may be others, but that not being my end of the business, I am not too awfully familiar with it.

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(Tr. p. 1169)

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B. J. Feigenbaum

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Your full name and address, please.

The Witness: My initials are B. J. F-e-i-g-e-n-b-a-u-m, Feigenbaum. My address is 111 Sutter Street, San Francisco.

DIRECT EXAMINATION

By Mr. Tincher:

Q. Will you tell us for the record, sir, your occupation? A. I am an attorney-at-law.

Q. Do you practice actively? A. I practice actively, yes, in San Francisco.

Q. Have you had any connection with the Clorox Chemical Company, sir? A. Yes. The company has been a client of our office for many years and I personally was a director and vice-president of the company since about 1930, I believe.

(Tr. p. 1170)

Q. Was that up to and including August 1, 1957? A. That is the Clorox Chemical Company you asked about?

Q. Yes, sir. A. Until the time of its dissolution, yes.

Q. And what department of the company were you in charge of, as vice-president? A. I was not in charge of any department. I had that title, as general counsel.

Q. Were you a stockholder? A. Yes, sir.

Q. From August 1, 1957, to the present time have you been connected with The Clorox Company? A. They have retained our office as counsel for the company, for The Clorox Company, and I personally have been doing a good portion of the work that they have from day to day.

Q. Are you an officer of The Clorox Company? A. No, sir.

Q. Are you a member of the board? A. No, sir.

Q. Do you own any stock in it? A. No, sir—well, as a stockholder of Clorox Chemical Company, I became a stockholder in Procter & Gamble.

Q. Let me ask you if your shares of the Clorox Chemical stock were distributed according to the acquisition

(Tr. p. 1171)

arrangements whereby you became a P & G stockholder. A. Yes, sir. If I understood your question. Perhaps you should repeat it.

Mr. Tincher: Would you read the question, Mr. Reporter?

(Last question read.)

A. The Clorox Chemical Company stock wasn't distributed. I owned that, and I received Procter & Gamble stock upon the dissolution of The Clorox Chemical Company. I think that is what you were driving at?

Q. Yes, sir.

Hearing Examiner Haycraft: In proportion to your holdings in The Clorox Chemical Company?

The Witness: Yes. The exchange was 8½ shares for 10 shares.

Hearing Examiner Haycraft: That is, 8½ shares——

The Witness: Of Procter & Gamble——

Hearing Examiner Haycraft: For 10 shares that you had of Clorox Chemical?

The Witness: That is correct.

By Mr. Tincher:

Q. Were you familiar with the original negotiations and the agreement for acquisition in April of 1957, which preceded the August acquisition? A. Yes.

(Tr. p. 1172)

Q. And was there any change made after April of '57, and prior to the acquisition, any change from the original agreement which was drawn up in April? A. None that I recollect.

Q. And do I understand correctly that the basis for the exchange, the 8½ to 10 ratio, was based on the shares outstanding in April 15 '57, with the minor exception of——

Hearing Examiner Haycraft: You mean the value, the market value of the shares?

Mr. Tincher: Value and number both, sir, with the possible exception of options which might be exercised.

A. Well, the agreement speaks for itself in that respect. I think your statement is correct, but the agreement, as I say, contains it.

By Mr. Tincher:

Q. All right, sir. Now, when did the negotiations with Procter & Gamble commence for the acquisition of Clorox Chemical? A. We had negotiations that didn't result in the transaction. Do you want me to give the earlier, sir, or just those that culminated in the transaction.

Q. No. Mention the earlier ones, too, please. A. I guess the negotiations commenced in December of '56, so far as any contact that the officials of the company had with Procter & Gamble. I am trying to get that year

(Tr. p. 1173)

right. It will come to me. It was the month of December; I can remember that part of it. Previously we had been approached, I personally, by Mr. M. F. Hellman, who is the senior partner in J. Barth & Co., who had been—his firm had been the investment bankers for The Clorox Chemical Company since its inception in 1929—'28, and former partner had been director for some years. He died a few years ago. Mr. Hellman approached me saying that——

Q. Now, if you will allow me to interrupt you, I think you would accept as good legal advice you shouldn't give us any hearsay. A. All right. That certainly would be hearsay, but I thought you were asking me about the negotiations.

Q. Well, you can just give us the facts, sir, and what occurred. A. Well, I said he approached me. That's a fact.

Q. And this was in December of '56, or prior to that? A. No, sir. I was saying it was quite prior to that.

Q. '55, perhaps? A. I think it was, yes.

Q. Now, do I understand that those earlier negotiations broke down for some reason? A. Yes; he approached

us, I started to mention to you, and I told him that after talking to Mr. Roth that we were not interested. He wanted to see if he couldn't make a

(Tr. p. 1174)

favorable deal. This was not necessarily Procter & Gamble, but he thought that the company had grown to a size where it might be advantageous to see if we could make a deal.

I might digress to say that the company prior to that time or after that received letters, I can't tell you whether the average would be five, six, or ten, or twelve a year, from other investment bankers or people who allege that they are trying to work up some deal.

Q. Were these people all investment bankers? A. I wouldn't know. You can't tell from their letterhead. We didn't answer many of the letters.

Shortly after that, oh, perhaps two months after, or a little less, after Mr. Hellman's call, I was approached by a local individual for another company of a very large size wanting to see if the Clorox could be acquired. I talked to Mr. Roth about it. Much to my surprise he evidenced interest.

That being so, I felt I was duty bound to tell Mr. Hellman that there had been a change of heart and that if he had something concrete to offer he should let me know. And he said that he thought that it was a fine company to acquire,—maybe I should leave out the adjective—a company to acquire that might well fit in, he might well fit in with, would be Procter & Gamble, and he was going to explore it if it was all right.

(Tr. p. 1175)

I asked Mr. Roth, who assented that he would look into it. He proceeded to and set up an appointment for us

in New York City. I went on with Mr. Roth, and we had a preliminary meeting there, one further meeting, and the matter was dropped because we couldn't arrive at a satisfactory price.

Meanwhile, the other negotiations had likewise been dropped. Some eight or ten months later, something like that, in about October of '56, Mr. Hellman got in touch with me again, and he said, "You know,"—I shouldn't try and quote him—got in touch with me again with the avowed purpose of attempting to work out negotiations between the parties again. That culminated in further conference, and then the contract to which you referred.

Q. Right, sir. Now, what was this large company that you mentioned which was interested? A. Well, we tried to keep the name quiet, but I see no reason why I shouldn't mention it. It was the Monsanto Chemical.

Q. And what product does that company make? What products was that company making at that time?

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(Tr. p. 1176)

The Witness: I am not familiar with all the lines, but they had recently acquired the Lion Oil Company, so they were in oil as well as all the chemicals. They had a half interest in Chemstrand so that they were in the viscose business. They had large plastic divisions, and they had a product by the name of All that was sold in the household trade.

Hearing Examiner Haycraft: That is a detergent, isn't it?

The Witness: Yes, sir. I think it is called a settler's detergent that they had worked up and the buyers offered it to The Clorox Company but they didn't see the future in it some time before that. We likewise were approached

—you are only interested in the names. Right in that same period, by Diamond Alkali.

* * * * *

Q. All right, sir. Now, can you tell us of your own knowledge whether the offer from Monsanto came before or after that concern was acquired by Lever Brothers? A. Before or after it was acquired?

Q. Yes. A. Very considerably before, but let me say in fairness to Monsanto that there was no firm offer. There were acquisi-

(Tr. p. 1177)

tions that did not lead up to an offer. We broke them off.

Q. Now, did this negotiation that you are now referring to also fail because no agreement could be reached on price? A. No. As I mentioned earlier, or I thought I had, I told Mr. Hellman of this. He talked, whether directly or indirectly I don't know, to Procter & Gamble. This is the first step now, again, you know. And we went East to see them. It appeared to the officers of the Clorox Chemical Company that if Procter & Gamble was interested in acquiring, we would much rather have that type of a transaction, assuming that the price would be fair. No price was mentioned at that time.

Q. And why were you more interested in Procter & Gamble, sir? A. I think it is a better company.

Q. For what reason, sir? A. Well, I am not an investment man, but I guess sometimes the record is better than your surmise, and if you will look to what has happened to the securities of Monsanto since the transaction as opposed to the securities of Procter & Gamble since the transaction, I think you will find that our judgment was sound.

Q. Yes, sir, but I didn't ask you if your judgment was sound. I am talking about at the time you made the

(Tr. p. 1178)

judgment you didn't have the advantage of the hindsight. A. It wasn't hindsight. Our foresight is borne out by our judgment.

Q. Let's get back to the time you were considering the acquisition rather than now just giving your business decision which we will all admit was fine. At that time what were the reasons for preferring P & G? A. I tried to tell you.

Q. Can you tell me in terms of the present, sir? A. I tried to tell you that at that time it was felt that The Procter & Gamble Company was a more efficient, better run company. You see, there is another thing that enters into all of this, and you know this as well as I do, and I don't know whether it belongs in the record, but under our tax set up where you have a company that has been successful as Clorox had been and you have old-time stockholders who have substantial paper profits, you can't—and they were long in years and many of ours were—you can't sell out for cash other than at a rather distinct tax disadvantage. But the Internal Revenue Code suggests that it is very appropriate to be acquired by or be merged with some other company.

(Tr. p. 1179)

Q. Of course, as a lawyer, you realize the tax matter has nothing to do with the legality of the merger, don't you? A. You are not talking about legality. You asked me about advisability, and I think the tax result does tend to move us towards the——

Q. But that would have nothing to do with whether you buy from Monsanto or P & G, just the tax angle alone?

A. Not the tax angle alone, other than you end up with the paper of the company that you believe to be the desirable one, sir.

Hearing Examiner Haycraft: If I gather it correctly, what was uppermost, apparently, in your mind was to make a trade of stock, exchange of stock?

The Witness: That is right.

Hearing Examiner Haycraft: And you were exchanging stock that you had in Clorox for the stock either Monsanto or Procter & Gamble?

The Witness: Or Diamond Alkali or anybody else, surely, sir. Certainly.

By Mr. Tincher:

Q. We spoke of various offers coming into the Clorox Chemical Company, sir. Let me ask you if Clorox Chemical Company sent notices out to anybody that they would be interested in exchanging stock. A. Only once. And that was through Mr. Hellman, in this

(Tr. p. 1180)

transaction to which I adverted before. The idea, I will admit, was not in the company. But we authorized him to proceed, in view of that, sir.

Q. So there was no attempt made by Clorox Chemical Company to trade stock with any other soap or detergent or cleanser or bleach company? A. Definitely not, sir.

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(Tr. p. 1194)

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Q. Mr. Feigenbaum, let me hand you what has previously been marked as Commission's Exhibit No. 28 for identification.

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B. J. Feigenbaum—Cross

(Tr. p. 1195)

* * * * *

Q. Let me hand it to you, sir, and I will ask you if this isn't the notice of a special meeting of stockholders to vote on the acquisition of Clorox Chemical Company by the Procter & Gamble Company? A. That is correct.

Q. And it was published by Clorox Chemical Company? A. It was issued, put out, yes, by Clorox Chemical Company.

Mr. Tincher: All right, sir.

I offer Commission's Exhibit No. 28 into evidence, sir.

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(Tr. p. 1200)

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(The paper referred to, heretofore marked for identification Commission's Exhibit 28, was received in evidence.)

(Tr. p. 1201)

CROSS-EXAMINATION

By Mr. Royall:

Q. Now, Mr. Feigenbaum, who was the first person to approach you—the first person who approached the company about a possible sale? Was it Mr. Hellman? A. That's correct. You mean——

Q. At that time. A. That ultimately resulted in the Procter & Gamble transaction.

Q. Yes.

* * * * *

By Mr. Royall:

Q. Well, do you know what his position was? A. He was a senior partner of J. Barth & Company.

Q. And what was the business of J. Barth & Company?

(Tr. p. 1202)

A. Investment bankers who had been the investment bankers, as I mentioned earlier, for The Clorox Chemical Company since its inception in 1928, 1929.

Q. Now, from whom did you first learn the name of Procter & Gamble in connection with this matter?

A. Mr. Hellman suggested it.

* * * * *

Q. Do you know when that was? Was it in 1955? A. I think that's right.

Hearing Examiner Haycraft: He said he thinks it was in October of 1955.

The Witness: I can verify that by office records,

(Tr. p. 1203)

but that is my best recollection.

By Mr. Royall:

Q. Now, when was the first time Procter & Gamble and the company discussed the matter? A. I met with two Procter & Gamble officials in New York City in December of that year.

Q. Did Mr. Roth arrange that? A. You mean Mr. Hellman?

Q. Did Mr. Hellman arrange that? A. Yes, sir.

Q. Up to that time had the Clorox Chemical Company had any communication, directly or indirectly, from Procter & Gamble before Mr. Hellman brought it to your attention? A. No, not before Mr. Hellman brought it to our attention.

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(Tr. p. 1207)

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REDIRECT EXAMINATION

By Mr. Tincher:

Q. Do I understand you correctly that Mr. Hellman represented a bankers' investment group? A. No. J. Barth & Co. are stockbrokers and investment bankers, and they originally participated in the underwriting of the Clorox Chemical Company in 1928 and 1929, and at that time placed a substantial amount of the stock with their regular clients, many of whom they have today. So he has always been very close to the company, very much interested in it, because he represents, through being the financial

(Tr. p. 1208)

adviser, let us say, to his clients, many stockholders.

Q. Right, sir. Now, you would have no way of knowing whether this group of investment bankers was approaching Clorox on behalf of themselves or a client, would you? A. There was no group. It was Mr. Hellman personally.

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(Tr. p. 1209)

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Q. Right. Now, you said there had been no correspondence with P & G up to a certain time. Do you recall that? A. That is right.

Q. Does that include all communication as well? Or do you know? A. Yes, so far as I know. I can only speak for myself personally. It would be hearsay to anybody else. But I would have had knowledge of it, I would have heard, as their counsel, and as close as I was, and I am satisfied that at the time he first broached the subject there had never been any connection, oral, written or in any way,

by anybody in the company with Procter & Gamble. That is a pretty broad statement, but I think it is correct, sir.

Q. When did you first learn of the proposed acquisition by P & G? And I am speaking of the second attempt, apparently after the first one failed. A. Oh. The first time he spoke to me, Mr. Hellman came to me—this was in the end of '56, I can't remember now whether it was October or November, but in there—saying that this fell through, but he thinks it would have been sound, and he would like to proceed again to see if he could open it up, and could he have permission to do so.

Q. Did you then take his suggestion to Mr. Roth? A. Yes, sir.

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(Tr. p. 1212)

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John F. Chaddock

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Your full name and address?

The Witness: John F. Chaddock.

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(Tr. p. 1213)

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By Mr. Tincher:

Q. What is your occupation, sir? A. I am a food broker.

Q. What company are you connected with? A. Kelley-Clarke Company.

Q. What is your position with that company? A. Partner.

* * * * *

Q. How long have you been connected with the Kelley-Clarke Company? A. Since 1919.

Q. And during that period of time has your company been a distributor of Clorox bleach? A. They have.

Q. Over what period of years, sir?

(Tr. p. 1214)

A. From that time, and from a few years previous. I don't know the exact date. About 1916.

Q. To the present time? A. To the present time.

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(Tr. p. 1215)

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Q. You were also asked, sir, to bring in a statement which will show the sales by Kelley-Clarke Company of other bleaches. Do you have such a statement? A. We do not sell any other bleaches.

Q. You sell Clorox exclusively? A. Correct.

* * * *

Q. Now, as the distributor for Clorox bleach do you have an exclusive sales territory? A. We do, yes.

Q. And what is that territory? A. Northern California.

Q. How about the rest of California, and Oregon and Washington? A. That's all handled by other offices of the company. We have offices in Portland, Seattle, Los Angeles.

(Tr. p. 1216)

Hearing Examiner Haycraft: Are they exclusive in those areas?

The Witness: Those areas, correct.

Hearing Examiner Haycraft: Your partnership?

The Witness: Our partnership. We cover everything except the San Diego area on the Pacific Coast.

By Mr. Tincher:

Q. And why is not that area covered, sir? A. Well, they have another distributor there, have had from the inception.

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(Tr. p. 1217)

* * * * *

Q. Will you explain to us as briefly as possible just exactly how you purchase bleach or what your connection with Clorox bleach is and how you sell it? A. Well, as the sales agents or distributors, we buy from The Clorox Company and resell to wholesale grocers and other distributors in the various areas.

Q. You actually——

Hearing Examiner Haycraft: Chain stores, do you sell to chain stores?

The Witness: We sell to chain stores direct and wholesale grocers direct.

Hearing Examiner Haycraft: You don't sell to retailers?

The Witness: No, but we do have a force that solicits from retailers which, in turn, are routed through the wholesaler.

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(Tr. p. 1220)

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Q. Mr. Chaddock, I will hand you Commission's Exhibit 399-A and B for identification, and I will ask you if those are the prices currently being charged by The Clorox Company? A. To the Kelley-Clarke Company, yes.

Mr. Tincher: Mr. Examiner, I offer Commission's 399-A and B at this time.

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Hearing Examiner Haycraft: It may be admitted, 399-A and B for identification.

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(Tr. p. 1228)

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By Mr. Tincher:

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Q. Now, what else does your company sell besides Clorox, sir? A. Well, we sell sugar, canned goods, fruit jars, peanut butter, corn products. You name it, we have it.

(Tr. p. 1229)

Q. All right, sir.

And these salesmen that you mentioned sell these products and Clorox to the people they call on? A. They sell certain of these products. They sell what we call proprietary products.

Q. And which are those, sir? A. Well, they are those which would be identifiable primarily by brand. In other words, we don't attempt to sell bulk corn starch to a sales organization or bulk sugar.

Q. And do you have brands in all these various products that you mentioned? A. No.

Q. Which ones do you? A. Well, we have brands in sugar, in peanut butter. We have them in parts of all of the brands. Canned goods would be not a commodity but a category. And we represent, for instance, the F. H. Snow Company canned clams, and that is the brand.

Q. Do you sell any Procter & Gamble products, sir? A. We do not.

Q. Now, what percentage of your business, approximately, is Clorox liquid bleach? A. Of our total business?

Q. Yes. A. About 12½ per cent.

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(Tr. p. 1231)

Q. Now, since you have been selling Clorox from 1952 until August 1, 1957, during that period of time, 1952 until August of 1957, did the Clorox Company ever distribute any coupons to the public for Clorox bleach, and by "coupons" I mean 3¢ off for a quart or 7¢ off for a gallon or anything like that? A. No, sir, they did not.

Q. I will ask you if they ever distributed any free samples to the public, either direct or through the mails? A. Not to my knowledge.

Q. I will ask you if the Clorox Chemical Company ever had any contests such as a $60,000 contest, either for completing a jingle or solving a puzzle or something of that nature? A. No.

Q. I will ask you if during that period Clorox liquid bleach was ever tied into any other product on a price basis or a giveaway basis? A. No.

Q. I will ask you that if during that period of time the Clorox Company ever distributed any free premiums to housewives either with the purchase of a bottle of Clorox or a coupon on the bottle to be sent in for a free premium? A. No.

Q. Now, you are, of course, familiar with the Clorox Fall

(Tr. p. 1232)

and Spring housecleaning drive, are you not? A. Yes, sir.

Q. And when did those two particular drives commence as far as your particular experience with them is concerned? A. I would say two years ago.

Q. Are these two drives successful in increasing the sales of Clorox?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Overruled.

A. I would say that momentarily they are.

By Mr. Tincher:

Q. During the period of the drive; is that correct? A. Yes.

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(Tr. p. 1233)

Q. Do you distribute any other nationally advertised product in addition to Clorox? A. Yes.

Q. And what products are those, sir? A. Well, we sell the Staley Manufacturing Company's products, Sta-Flo, Sta-Puf.

Q. Are those starches or a bluing? A. Yes, sir. One is a starch and the other is a fabric conditioner. Sta-Puf is a fabric conditioner, and Sta-Flo is a starch.

Q. Do you sell any soaps, detergents, or cleansers? A. We represent the Calgon Co. who are a producer of a water softener.

Q. Calgon? A. Yes. The Hagen Corporation.

Q. Do they make products for dishwashers? A. Yes.

Q. Do you sell that? A. We do sell that.

Q. And that product competes with the Cascade product of the Procter & Gamble Company? A. Correct.

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(Tr. p. 1242)

Room 261,

United States Post Office,
Seventh & Mission Streets,
San Francisco, California

April 16, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 1244)

PROCEEDINGS

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(Tr. p. 1248)

Mr. Tincher: Mr. Reporter, would you please mark as Commission's Exhibit 402 for identification a one-page document entitled Clorox Chemical Company Advertising and Promotional Expenditures for the period 1952 through July 1957, and as Commission's Exhibit 403 a document of The Clorox Chemical Company, same title, for the period August 1, 1957, through December 31, 1957;

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(Tr. p. 1249)

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Mr. Tincher: Mr. Examiner, at this time I offer Commission's Exhibits 402 through 407.

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(Tr. p. 1255)

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(The papers referred to, heretofore marked for identification Commission's Exhibits Nos. 402 and 403, were received in evidence, in camera.)

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(Tr. p. 1266)

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Bernard F. Trimpe

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: What is your full name?

The Witness: Bernard F. Trimpe. The F is for Franklin.

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(Tr. p. 1267)

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By Mr. Tincher:

Q. Mr. Trimpe, would you state for the record, please, your occupation? A. I am Vice-President in charge of sales of the Clorox Company.

Q. And how long have you held that position? A. Since August 1st.

Q. 1957? A. 1957.

Q. And what was your position prior to that time, sir? A. Vice-President in charge of sales of The Clorox Chemical Company.

Q. And how long had you been in that employment? A. July 6, 1955.

Q. And during the period from 1955 to the present you have been Sales Manager in charge of selling Clorox liquid bleach? A. Correct.

Q. Mr. Trimpe, the sale of liquid bleach is heaviest in the period of May to September each year, isn't it? A. There is a seasonal increase during the summer months.

Q. And then in answer to my specific question, the sale

is heaviest from May to September? Is that what you refer to as the summer months? A. Yes, that's correct.

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(Tr. p. 1275)

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Q. All right, sir. Now, a Mr. William Bernard Young became division sales manager for the Pacific Division of The Clorox Company in January of 1958, did he not?

(Tr. p. 1276)

A. Yes.

Q. And immediately prior to that he had been district manager of the San Francisco district of the Case Soap Sales Department of the Procter & Gamble Distributing Company? A. Correct, yes.

Q. How many other divisional sales managers are there? A. Four in addition to Mr. Young.

Q. And will you tell us who they are in each case and how long they have held the position and where they came from immediately prior to taking the positions? A. The first one we hired is Frank E. Bosworth——B-o-s-w-o-r-t-h.

Q. And—— A. He came with us a little over a year ago, I guess about 14 or 15 months, I don't have the exact date.

Prior to that time he was with the Otis-McAllister Company of New York.

The second one we hired was William E. Everett—E-v-e-r-e-t-t. He's been with us a little over a year. Again I don't know the exact dates. Prior to that time he was with Wright's Silver Cream people—W-r-i-g-h-t's.

The third man we hired is Arthur E. Laramy—L-a-r-a-m-y. He was previously with Grocery Store Products, Incorporated.

Q. And when was he hired? A. And he has been with us about six or seven months, I'd

(Tr. p. 1277)

guess, something like that.

Q. Was he hired before or after the acquisition? A. He was hired before the acquisition. And then recently we have hired Edward Melnick—M-e-l-n-i-c-k—who has been with us about 45 days, I guess. He was previously with the Quaker Oats Company.

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(Tr. p. 1278)

Q. Let me ask you first preliminarily, if I may: Isn't it a fact that private label bleaches in the retail stores sell at a considerably lower price than Clorox does? A. Well, it—is it necessary to—may I ask you a question? Is it necessary to define "considerably"?. I don't know.

Q. Well, let me suggest to you as a typical example, for example, that a quart of Clorox sells in the average retail store at 19 cents, where a quart of private brand bleach will sell in the same store right next to the Clorox any place from 12 to 16 cents. A. Yes, that's true.

Q. And that's typical? A. That's a typical range.

Q. Right. Now, will you tell us the reason the Clorox Company in January of 1958 was interested in this private brand competitive situation? A. Yes. The Clorox Company interest was mine, and I was very concerned about the increasing number of private labels, and I felt it my responsibility to know how many there were and where they were and other information, any other information I could get about it.

Q. Were the increased number of labels indicating an increased number of producers? Or do you know? Or were they the same producers and not more private labels?

(Tr. p. 1279)

A. Well, from the information that I have I would guess that there have been some new entrees in the industry, but in general this represents established suppliers being willing to pack private label bleach.

Q. But your knowledge as contrasted to your guess, your knowledge is that it's established producers expanding the number of private labels they have? A. Yes.

Q. Was this true nationally or just in selected areas of the nation? A. Well, it's concentrated in certain areas, but it's true nationally.

Q. All right, sir. Now, up to the present time did either The Clorox Chemical Company or has The Clorox Company ever produced a private label bleach? A. No.

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(Tr. p. 1283)

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Q. Now, Mr. Trimpe, at this time and for a couple of months plans had been under way for the 1958 spring housecleaning drive for Clorox, had they not? A. Correct.

Q. And that drive is scheduled to commence approximately April 17th to 18th in the south and a week later in the north, or do I have it backwards? A. No, that's correct.

Q. Now, it is a fact, is it not, that in this spring cleanup drive a zippered, heavy plastic laundry dampening bag will be given as a premium with the purchase of a quart, half gallon, or a gallon of Clorox and the payment of 35 cents by the consuming purchaser? A. She buys the product and takes a portion of the label and puts her name on it and sends it in with 35 cents, with the premium, yes.

Q. And these premiums are being shipped from Cincinnati, Ohio, is that correct? A. No, samples were sent

to them so they would have an idea of what they look like, a few samples, but the housewife sends 35 cents and a portion of the label to a redemption point. They have nothing to do with the redeeming.

Q. Where is the redemption point, sir? A. Cincinnati, Ohio.

(Tr. p. 1284)

Q. That is the offices, of course, of the Procter & Gamble Company where they send for redemption? A. That's correct.

(Tr. p. 1285)

Q. In your years with The Clorox Chemical Company prior to August 1, 1957, did The Clorox Company ever give any free premiums of this or any other nature to the consuming public?

Hearing Examiner Haycraft: Clorox Chemical? We are trying to keep them apart.

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A. No, we did not have any self-liquidating premium.

Hearing Examiner Haycraft: This "self liquidating" you are putting in there all the time—did you have any kind of a premium?

The Witness: Well, in Canada we had a five-cent token, which we issued to the distributor, and he, in turn,

(Tr. p. 1286)

issued to some demonstrators, and they, in turn, issued that to the housewife as she came in the store. And then——

Hearing Examiner Haycraft: I think his question was the United States, domestic.

The Witness: I am sorry. I didn't gather that.

A. In the United States, no.

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By Mr. Tincher:

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Q. I ask you the same question as to the same period of time with respect to price-reducing coupons, such as were used in Erie, Pennsylvania, and Evansville, Indiana, subsequent to the acquisition. Are you familiar with those? A. Yes. No, we did not use those.

Q. During that same period of time did the Clorox Chemical Company ever utilize any contests among the consuming public? And, by that, I have reference to something such as a $60,000 Treasure Chest or any comparable contest.

(Tr. p. 1287)

A. No, we did not use that.

Q. During that same period of time did the Clorox Chemical Company ever give away free samples to the consuming public, as distinguished from new mothers and that sort of thing; just to the public in general? A. No, we did not.

Q. During that period of time did The Clorox Chemical Company ever offer Clorox in connection with any other product, other than your Spring and housecleaning drives, where Clorox was related to housecleaning products? What I have in mind is a situation where Clorox is offered with a box of detergent or cross-couponing or cross-price relationship. A. We were approached, but we did not do it.

Q. Approached by a soap and detergent company? A. No. O'Cello sponge people, as I understand it, and Staley's starch.

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(Tr. p. 1290)

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Q. Mr. Trimpe, you will recall the questions I was asking you before recess for the time period from '55 through

August 1, of '57. I have one more question along those lines.

At any time during that time period did The Clorox Chemical Company ever tie in the sale of a smaller size bottle with a larger size or giveaway or reduce the price on a smaller size if a larger size were bought? A. No.

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(Tr. p. 1314)

Q. All right, sir. Now, let me ask you if you are familiar with the New York Journal American Survey concerning Clorox?

(Tr. p. 1315)

Hearing Examiner Haycraft: What is the date of that?

Mr. Tincher: It is dated January 24, 1957.

A. I think it represents typical newspaper presentation in terms of what the newspaper did to further implement the promotional campaigns that we have had, and probably it has come across my desk.

By Mr. Tincher:

Q. Is this something done only by the large city newspapers, sir? A. No. I think, in general, all the newspapers provide a newspaper merchandising service.

Hearing Examiner Haycraft: You mean you have to pay them for that?

The Witness: No, sir. They offer that as one of the benefits of placing ads with the newspaper.

Hearing Examiner Haycraft: Oh, placing ads with them.

Well, did you have anything to do with the preparation of this?

The Witness: Nothing.

Hearing Examiner Haycraft: Did you buy anything from or furnish anything to the newspaper?

The Witness: No.

Hearing Examiner Haycraft: What this really is, then, is an attempt on the part of the newspaper to increase

(Tr. p. 1316)

its advertising by demonstrating the service to certain advertisers?

The Witness: Yes, sir. To everyone, I think, they offer the same.

Hearing Examiner Haycraft: I am somewhat familiar with that practice.

By Mr. Tincher:

Q. Mr. Trimpe, are you familiar with the press release issued by Clorox Chemical Company from Oakland, California, concerning the acquisition of Clorox by Procter & Gamble? A. Yes. I read it.

Mr. Tincher: I would like marked as Commission's Exhibit No. 413——

Hearing Examiner Haycraft: It is two pages, isn't it?

Mr. Tincher: Right, sir. (Continuing) ——A and B.

Hearing Examiner Haycraft: What is the date of that?

Mr. Tincher: A press release dated April 22, 1957.

(The papers referred to were marked Commission's Exhibits 413A and 413B for identification.)

By Mr. Tincher:

Q. I will hand that to you, sir, and ask you if that isn't a press release put out by Clorox Chemical at the time the

(Tr. p. 1317)

proposed acquisition was first publicly announced. A. Yes, sir. That is.

Mr. Royall: No objection.

Hearing Examiner Haycraft: Commission's Exhibits 413A and B for identification are received in evidence.

(The papers referred to, heretofore marked for identification Commission's Exhibits 413A and 413B, were received in evidence.)

By Mr. Tincher:

Q. Mr. Trimpe, have you been familiarized with the price increases of Clorox in '56 and '57? A. Yes, I have.

Q. And how many price increases were there in 1957? A. Two.

Q. One before and one after the acquisition? A. Correct.

Q. And what was the reason for those two price increases? A. Well, in both cases increased costs.

Q. Just costs in general or specific types of costs? A. Well, I think in the first increase we had freight and glass and cap and other costs. And the November price increase was because of certain freight costs and increased administrative expenses.

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(Tr. p. 1319)

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By Mr. Tincher:

Q. Let me ask you if the retail price of Clorox went up subsequent to the second, 1957, increase, if you know; and by "retail," I mean to the housewife in the grocery store. A. I want to get clear again. You mean after we increased the price in November, did retail prices go up?

Q. In November or December or even after that. A. Well, in certain parts of the country, yes, and in other

parts, no. That is the reason I find it difficult to answer the question.

Q. I see, sir. All right. A. It's dictated by the local competitive situation and by the decision of the wholesaler and Chain who purchase Clorox from our distributors.

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(Tr. p. 1320)

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Hearing Examiner Haycraft: No. 1, is there any national, is there any competitive producer or processor that sells everywhere that you sell?

The Witness: No, there is not.

Hearing Examiner Haycraft: Is it a fact that in numerous local areas there are competitors?

The Witness: Yes, that is true.

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(Tr. p. 1326)

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By Mr. Tincher:

Q. Mr. Trimpe, have coupons which reduce the price to the consumer been used by The Clorox Company anyplace other than Erie, Pennsylvania, and Evansville, Indiana? A. We do not use coupons in Erie, Pennsylvania.

Q. I beg your pardon, sir. I mean all prices in labels. A. Have they been used?

Q. Yes. A. In Erie, Pennsylvania, and Evansville, Indiana, is all.

Q. Right; and will you tell us the location and the type of premium that was used at that location in every instance where

(Tr. p. 1327)

premiums have been used by The Clorox Company? A. Yes. We used them in the Southern part of the United

States for over three years, and we have found that we are facing a sales trend that is adverse.

Q. Now, excuse me, sir. A. All right.

Q. I merely asked you if you would tell us where the Clorox Company, since August 1, 1957, has used premiums of this type. A. We use premiums of this type in the southeastern region of the United States, and there we use a self-liquidating ironing board cover premium. And then in Erie, Pennsylvania, we used the same self-liquidating ironing board cover premium at a later date and currently we are using nationwide the laundry-dampening bag, self-liquidating premium.

(Tr. p. 1328)

Q. Has The Clorox Company, which of course means since August 1, 1957, used any coupons to the consumers? A. No, we have no coupons.

Q. Has there been any contest? A. No.

Q. For consumers? A. No contests.

Q. Have there been any product combinations, either 2 for 1 with small size free or large size 1, or anything of that sort? A. No. There has not been.

Q. Has there been any combination with any other non-bleach product? A. None. When I say none, I mean not initiated by us. If a local retailer decided he wanted to tie in something with Clorox, that was his decision, not ours.

Mr. Tincher: That is all.

CROSS-EXAMINATION

By Mr. Royall:

Q. But those methods which were described in the last question by Mr. Tincher have been used by other bleach

manufacturers, have they not? A. Yes. All of the merchandising techniques are available to everybody.

Q. But they have been used by competing bleach manufacturers?

(Tr. p. 1329)

A. Yes.

Q. And the premiums which you referred to as being used in the southeastern part of the country started when, for Clorox or Clorox Chemical? A. Well, we used the first premium, which was the ironing board cover, in the fall of '57.

Q. The—Not an ironing board cover, but has that sort of premium been used by competing bleaches? A. Yes.

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(Tr. p. 1339)

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Q. What is your principal duty, as Sales Manager? A. To sell Clorox

Q. And in connection with that duty, do you or do you not keep in contact with your distributors and through them with the trade, in an effort to sell Clorox? A. The first year I was with the company I traveled 42 weeks out of 52; the second year 37. And then, as we got division men, I was able to cut down on my traveling. But my first two years primarily were made up with personal contacts to meet the distributors, and then certainly through correspondence, and now I hope more through these division

(Tr. p. 1340)

managers; but always constantly daily, hourly, to get every piece of information about competitive circumstance or any other factor involved in sales management.

Q. Has there been any change in that purpose or method of selling and keeping up with the results after the merger,

from what it was before the merger? A. Absolutely not.

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(Tr. p. 1347)

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Q. Now, has Clorox any plans at all for entering the private label business? A. None.

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(Tr. p. 1360)

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Q. Mr. Trimpe, the spring housecleaning campaign, as you have testified, has extended since 1946——

Hearing Examiner Haycraft: No. '55.

Mr. Royall: I mean '55.

Hearing Examiner Haycraft: '56.

Mr. Royall: '56. '56 is what I meant to say, '56.

By Mr. Royall:

Q. What reason did you have for premium being added this time? A. Well, we have been considering that for a long time.

Q. How long? A. Oh, practically from the beginning. When I was with another company I used premiums extensively, and when you have a promotion, any company, every company that has a promotion, after you use it a couple of times and if you stay on the same thing, you have got to do something to freshen it so that your sales force will have something new and a little different to talk about.

And we had long planned to have a self-liquidating premium in conjunction with these fall and spring promotions.

We may change it to something else later. We are not going to stick with it forever. But it seemed like a good idea at this time.

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Bernard F. Trimpe—Cross

(Tr. p. 1361)

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Q. Now, there was some discussion today about the premium redemption on this housecleaning plan. State whether or not Clorox pays Procter & Gamble for its redemption service? A. We pay them.

Q. Are there other independent services who would perform the same functions? A. Yes.

Q. On the record, Mr. Trimpe, there were some matters that the—there was one matter that seemed to me a little unclear. It may be on a question.

But I would like to ask you whether there is any area where Clorox does not have competitors. A. None.

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(Tr. p. 1362)

Hearing Examiner Haycraft: I have got a couple of questions that are bothering me a little bit here.

The use of premiums and things of that kind, you say you have been doing that before you came to Clorox?

The Witness: Yes, sir.

Hearing Examiner Haycraft: Who were you with?

The Witness: Stokely-Van Camp, Incorporated.

Hearing Examiner Haycraft: Does Stokely-Van Camp occupy the same position marketwise that Clorox occupies?

The Witness: Without divulging the actual figures, I was sales manager and my volume was bigger dollarwise.

Hearing Examiner Haycraft: I mean percentagewise.

The Witness: Yes. In its own industry it did within five or six per cent of what Clorox does in its industry, yes.

Hearing Examiner Haycraft: And would you say that the use or practice at that time was responsible for your getting that position?

The Witness: Well, we felt that they were very successful techniques.

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REDIRECT EXAMINATION

By Mr. Tincher:

(Tr. p. 1363)

Q. You say you have competition in every area of the United States? A. Yes.

Q. Or competitors? A. There is a competitive bleach in every market in which we sell.

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(Tr. p. 1366)

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By Mr. Tincher:

Q. Has anybody given orders to you that there are to be no changes in the promotion of the merchandising of Clorox Bleach? A. Well, I—nobody give me any orders about what we do merchandising-wise at any time.

Q. Nobody has given you any orders? A. Nobody has given me any orders about what we are to do to merchandise our product.

Q. So if there is no change, all you are doing is just a coincidence there has been no change; is that right? A. Well, I like to think, Mr. Tincher, that most of the techniques that we are using today have been available in the food industry for as much as 25 years. I know they

(Tr. p. 1367)

have been.

Q. That's right. And they have been available——

Mr. Royall: Wait a minute. Let him finish his answer.

By Mr. Tincher:

Q. Are you through, sir? A. No, I wasn't through.

Q. Go right ahead. A. And that you have to change your techniques to meet the circumstances of the times. The Clorox Company, Corox Chemical Company, did that before I ever came to work for them. We did it when I did come to work for them for a few years, and we have done it since August the 1st, 1957.

(Tr. p. 1368)

Q. Of course, now, your earlier testimony that during the period you were there, there were no price-reducing coupons, there were no samples, there were no tie-ins? A. That's right.

Q. The testimony you are giving now does not conflict with that, does it? A. Well, Mr. Tincher, after the 1949 or 1950 recession, the company made a decision to discontinue promotional techniques of that type and go into national advertising, and I think it paid off pretty well in terms of sales. They beefed up their advertising when the economy was prosperous, and the reasons we went into these spring and fall promotions—at least I did—was that I felt very strongly there was a growing increase in competition in 1957 especially, and the reason I wanted to strengthen it was because of the current recession, and I feel that the entire economic picture has changed, not only in our industry, but in the industry in general.

I feel that if I am any good at all as a sales manager, that I have to meet the competing times.

Q. The changes, then, are the recession; is that it? A. Well, I think there are many things, Mr. Tincher. One of the things that has happened in the food industry, and I am sure you are aware of this, is that there has grown

in the last two or three years a great number—there have grown

(Tr. p. 1369)

I am sorry, a great number of chains which are composites of a small group of stores and as they came together and gain buying power, they are in a better position to go into two or three things: one, their own labels, because these individual chains in each market have a good name. For example, Vaughn's in Los Angeles, or any other one you want to name; and as they get this gaining power, then they get into these private labels, and that is one of the big factors that has developed in the last few months, which caused the competition situation to change considerably.

Another thing is that this is a stable item I am selling, and one or two or three cents is an important thing to the housewife, especially when she is facing a recession period, and she has to eat and wash her clothes every week.

Q. Are you through? A. Yes.

Q. I take it during this recession period that coupons and premiums and price-reducing devices of whatever nature or tie-ins of other products would be much more effective in the period of 1956 or 1957 which was not a recession period? A. Well, I would say this, Mr. Tincher: As vice-president in charge of sales of this company, I am going to look each and every day at different types of advertising techniques available to us in the industry.

Q. Yes.

(Tr. p. 1370)

A. And I feel very strongly about the success of this company, but I am not going to be blind to the other promotional tactics.

Bernard F. Trimpe—Redirect

(Tr. p. 1371)

(Question read.)

A. I am sorry if I didn't convey an answer, Mr. Tincher. I have no proof that these techniques will sustain our position in the bleach industry. But I am going to look at them.

By Mr. Tincher:

Q. Are you testifying now that these sorts of things are not effective in a recession? I got the opposite impression from your previous testimony.

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The Witness: Well, we don't have any proof, Mr. Tincher. There is no way to——

Hearing Examiner Haycraft: He wants your opinion.

By Mr. Tincher:

(Tr. p. 1372)

Q. Didn't you say the company stopped, after the '49 and '50 recession, the company decided not to use those things?

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A. In general, I would say, Mr. Tincher, in the period of an expanding economy, with people in full employment and so forth, without getting away from the answer, that you could probably sustain your position better with increased advertising, but in a period of recession you might resort, you might get better results resorting to this type of promotion.

Q. Using those promotions, you tie them in with advertising; you don't use them by themselves, do you? A. Well, some of them.

Q. Such as? A. This self-liquidating premium. You would advertise that.

Q. Can you give me one premium you would not advertise? A. You would if you felt it warranted the expenditure.

Q. Yes, sir. And my question was, can you name one of those where you would not use advertising? A. Yes. If we used them in some instances where we just already had our advertising schedule set up and couldn't afford another ad, we would just let it stand on its own. It might be one way to test it actually.

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(Tr. p. 1375)

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Q. You testified that various bleach competitors had engaged in competitive promotions. Can you tell me any bleach competitor that has had a contest amongst the consuming public? A. Yes.

Q. Which one? A. Purex.

Q. Any others? A. I can't name them, but there have been some.

Q. Was Purex tied in with other products, or was it Purex alone? A. I believe it was tied in with other products, but I am sure bleach was in it.

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(Tr. p. 1380)

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By Mr. Tincher:

Q. Now, I have one final question, I believe, or just two final questions: One is: Is it your testimony, or do I misunderstand it, that you would prefer in your Spring drive

(Tr. p. 1381)

to try to tie into brooms rather than products such as Comet or Spic 'N Span or products of that nature? A.

My testimony was that I would prefer that they tie in with high mark-up specialty items, like waxes, polishes, tie in with brooms and mops and pails and items of that higher mark-up, so that when the whole display is moved by the consumer, or purchased by the consumer, that the retailer will get a good margin of profit out of that section of the store that he has devoted to the display, rather than some of these other items that have lower percentages of mark-up.

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(Tr. p. 1382)

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Q. You testified that Clorox Chemical had long planned a premium. Was anything like that reduced to writing or was it all in people's minds? A. No. I believe I have in my files letters from the premium people, who, and I have corresponded with them, they have come and called on me and suggested various types of premiums. I have evidenced by interest to various manufacturers.

Q. Well, what your testimony means is that premium people are constantly calling on you, as well as all the other

(Tr. p. 1383)

manufacturers? A. And I have contacted the people with whom I used to do business. I believe those are in my records.

Q. If the consideration had been that extensive, why hadn't premiums been used prior to the acquisition by P & G? A. Well, Mr. Tincher, when I first came with the company it was my recommendation that we try these Fall and Spring housecleaning promotions; and frankly, for the first go-'round we didn't get very good results. And, as each promotion has gone on and the distributors have, I guess, gotten more practice or more thought has

been given to it, or they see the value in it, they have become progressively better promotions. In the early stages, I think, I am sure the first couple, I was not sure that the thing would work at all. One of the problems in the bleach industry is whether or not you can get displays of bleach. People are a little leery of making displays of the product, from the breakage point of view. I wanted to try these promotions to see if our distributor salesmen could do the job of getting displays, how successful they would be. And then, as we progressed, and as we got progressively more successful, we realized we would have to do something to make them more interesting each time to a salesman. He needs something to talk about.

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(Tr. p. 1385)

Q. All right, sir. Now, you have testified something has to be added to these drives each time? A. Yes.

Q. May we take it from that that in future drives it will be necessary to add coupons or contests, things of that nature? A. Well, Mr. Tincher, we are giving a lot of thought not only to all of the elements that are available in merchandising, but giving some thought to possibly renaming them or at least one of them, with more emphasis on other uses of our product rather than on housecleaning in the fall, for example.

Q. Yes. Now, my question is, sir, are we to understand that because you have just testified something new must be added to these contests that in the future we can expect coupons or contests or things of that nature to be added for the same reason that the premium has been added to this year? A. We are going to take a long look at how the spring promotion comes out, and then if it proves pretty well, it's conceivable that if circumstances remain

the same we will consider coupons and other merchandising devices.

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(Tr. p. 1389)

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Neil Shaver

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

(Tr. p. 1390)

Hearing Examiner Haycraft: Give me your full name and your address.

The Witness: My name is Neil—N-e-i-l—Shaver—S-h-a-v-e-r.

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DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Shaver, would you state for the record what your occupation or position is? A. Yes. I am the advertising manager of The Clorox Company.

Q. And have you been that since its inception in August of '57? A. Yes.

Q. And what was your occupation prior to that time, sir? A. Advertising manager of The Clorox Chemical Company.

Q. And for how long had you held that position? A. Since March of 1953. About—since March of '53, anyway.

Q. All right, sir. Prior to March of '53 had you had any advertising or merchandising experience? A. Yes. I had been the advertising manager of the Gallo Wines, and also with Knox Reeves Advertising Agency on General

(Tr. p. 1391)

Mills products.

Q. All right, sir. Now, will you tell us in just as brief form as you can what your duties consist of as advertising manager? A. Essentially liaison with our advertising agency; interpret the company through the agency and the agency's recommendations to the company.

Q. All right, sir. And in so doing may we assume that you work in close conjunction with the advertising agency involved here? A. That's correct.

Q. And all of your advertising, I understand, or did I understand it correctly, is handled through an agency, the Honig-Cooper Company? A. The Honig-Cooper Company, that is correct, except for some advertising in the Jewish Tribune in New York that is placed through the Joseph Jacobs Agency. That is just in one newspaper.

Q. All right, sir. Now, is it correct that the various homemaker service and cooking school sessions and that sort of advertising was eliminated in view of additional promotional expansion during the year 1958 and that it was felt that the eliminated type of activity was not giving as great a return per dollar as the anticipated type of activity? A. We dropped those programs primarily because of the lack

(Tr. p. 1392)

or, rather, the decline in the audience and the falling off of coverage. For example, our cooking schools dropped from 240,000 people covered in 1956 to 220,000 in 1957. And there was also a decline in the coverage of the cradle car service.

Q. And in connection with notifying the distributors that those services were being discontinued, you did point out that you anticipated promotional expansion during the

next year, did you not? A. The recognized media, yes, that was more readily measurable.

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(Tr. p. 1394)

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Q. Now, I will ask you, sir, if it is not correct that during your years with The Clorox Company—both of them—that this represents the first effort to attempt to feature a tie-in with the holiday season with Clorox bleach. A. I don't believe that that features the holiday season.

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(Tr. p. 1395)

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Q. I think maybe you better read them both, sir. I realize the problem. Please take your time. A. It says "Holiday" but I do not believe that is the first or only time that we have done that.

Q. All right, sir. Under those conditions I will ask you if you will produce for us any such similar tie ins during the months of November—October, November, and December, for the years 1953, 1954, 1955, and 1956.

* * * * *

Q. Now, Mr. Shaver, you have referred to Clorox advertising commencing around the first of 1958 as the "new look" advertising, have you not? A. Yes.

Q. And what is this new look that you refer to? A. It is the same copy claim, essentially the same copy statements with a—using a photographer instead of drawings,

(Tr. p. 1396)

and also a difference in the format of the advertisement. There is no essential change in the advertising whatsoever.

Q. Now, using live models rather than drawings is a considerably more expensive process, is it not? A. No.

Q. Isn't it true that the new theme of the ads features what is sometimes referred to today in the trade as a "togetherness theme," an entire family rather than the housewife, for example, all by herself? A. No more than in the past. We have often featured family groups; probably as frequently as not.

Q. Well, now, that presents a problem.

Well, now, what is the extent of this new look, then?

A. We simply wanted to make the advertising appear to be somewhat fresh so that they would—could become enthusiastic about a theme that had been continued constantly into the second or third year with no changes. We had to do something to dress up the format.

Q. Yes. I realize that was your objective, but I am not asking you about your objectives, sir. I am trying to find out what the new look is. A. A different format, live action photography instead of drawings, different headline treatment, but no essential change in the copy except the "Whitest for White" and the

(Tr. p. 1397)

"Brightest for Brighter." Those are the two changes in the copy.

Q. And as a change that was going from two-thirds to one-half a page ads to full page in magazines. A. By eliminating color we could afford to use larger space. That is correct.

Q. That would be a part of the new look, too, wouldn't it? A. Yes. I might add that we also discontinued a number of magazines which also gave us funds which would permit us to use larger space.

Hearing Examiner Haycraft: You mean you did not increase your advertising literature?

The Witness: No, sir.

Hearing Examiner Haycraft: The same budget you had in '56?

The Witness: Yes.

Hearing Examiner Haycraft: The same in 1957 as you have in 1958?

The Witness: Yes, roughly speaking. There may be small changes.

By Mr. Tincher:

Q. Of course, Mr. Shaver, the same amount of money that is now being spent for advertising compared to that spent prior to the acquisition, the amount you are now spending buys more space because of discounts you are receiving, does

(Tr. p. 1398)

it not? A. Our discounts in newspapers is $2,000 out of an appropriation of $1,400,000.

Q. So newspapers are $2,000 cheaper—— A. That's right.

Q. (Continuing) ——under the present management than they were under the management of the Clorox Chemical Company? A. That's correct.

Q. And is that because there is a blanket rate for Procter & Gamble which includes The Clorox—— A. Yes.

Q. Now, is it your testimony, sir, and I am not trying to give you a hard time, but I just want to make sure we understand each other. Is it your testimony that in spending—how much do you spend for newspapers, first? Let me ask you that first. A. About $1,400,000.

Q. And in spending that $1,400,000 and using the Procter & Gamble blanket plan, the only savings are $2,000? A. Correct.

Q. Can the savings be greater if Clorox so desires in the future, or if P & G so desires? A. No.

Q. Why not? A. At our present schedule we are getting the maximum

(Tr. p. 1399)

discounts now.

Q. Well, assuming you would find it desirable to change the schedules—you have changed schedules in the past, haven't you? A. Yes.

(Tr. p. 1400)

Q. Well, assuming you would find it desirable to change the schedules seeking more discount for that specific purpose—— A. I don't understand your question.

Q. All right, sir. I will be very happy to rephrase it.

In an effort to obtain a greater discount than $2,000, with that as an objective—— A. Yes.

Q. (Continuing) ——could the present newspaper schedules be rearranged so that a far greater amount could be saved? A. I must qualify that. It is possible if we put more money into certain newspapers way out of proportion to the advertising schedule, it might be possible, but—in other words, we have our budget setup on the same number of spaces in each of the newspapers we use in the A, B and C schedules, and it wouldn't be logical to put any more space in any one newspaper to get a larger discount. I am not even sure there would be a larger discount obtainable.

Q. All right. Let me ask you if you have available to you in the Clorox Company the advertising books and records of Procter & Gamble, you would know where their advertising is and the frequency of that advertising? A. No.

Q. If you did have the advertising books and records of Procter & Gamble you would be able to be in conjunction with P & G's advertising so that you would be able to save far

(Tr. p. 1401)

more money than you are now saving, wouldn't you?

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Hearing Examiner Haycraft: Do you understand the question?

The Witness: I think I do. It is hypothetical.

By Mr. Tincher:

Q. Right. If you know exactly where and when somebody is advertising and somebody is sharing a blanket rate with you, you can then plan your own advertising to take advantage of the maximum discounts available, can you not?

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A. It would not be sound advertising practice. You are asking something that would be absurd from an advertising point of view because you buy media for this coverage and not discounts.

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(Tr. p. 1402)

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By Mr. Tincher:

Q. Mr. Shaver, let me give you an example that perhaps will do you better

Do various newspaper chains have a discount rate if you advertise in more than one of their papers?

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(Tr. p. 1403)

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A. There is such a thing as the combination of the morning and evening newspapers. It means you have to advertise in both papers. I know of no chains that—network of newspapers—that permit discounts over and above the normal discounts allowed by all newspapers.

Q. Well, by "Chain" I meant that if a corporation or an individual owns newspapers in four or five cities and has a discount structure rate, say the same in all these cities in each group, can't you lump together your—— A. I would imagine so if you wanted to use all four or five papers. Our decisions are determined by the markets we want to go in, not where the newspapers are.

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(Tr. p. 1405)

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Room 261,
United States Post Office,
Seventh & Mission Streets,
San Francisco, California.

April 17, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 1407)

PROCEEDINGS

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(Tr. p. 1410)

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Neil Shaver

called as a witness for the Commission, having been previously sworn, testified further as follows:

DIRECT EXAMINATION (resumed)

By Mr. Tincher:

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(Tr. p. 1411)

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Mr. Tincher: Mr. Reporter, will you please mark as Commission's Exhibit for identification No. 418, a proof sheet of an advertisement of Clorox from the Erwin Wasey & Co., advertising, undated, except in the upper right-hand corner the words, the letters "1944" appear.

(The paper referred to was marked Commission's Exhibit 418 for identification.)

By Mr. Tincher:

Q. Mr. Shaver, I will hand you Commission's Exhibit 418 and I will ask you if that is the only such exhibit that you were able to find overnight relating to the question I asked yesterday as to special price reductions and that sort of thing. A. No; we were not searching for an advertisement of this type. This was run across accidentally and came over from our advertising agency with the other documents.

(Tr. p. 1412)

Q. At least, it is all you have to produce at this time; is that correct? A. On this subject, yes, sir.

Q. And apparently it was used in 1944; is that correct? A. Approximately.

(Tr. p. 1413)

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Mr. Tincher: I think I will offer that, Mr. Examiner.

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Hearing Examiner Haycraft: It may be received as Commission's Exhibit 418 in evidence.

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(Tr. p. 1414)

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Q. All right. Now, I would like for you to consider that period when you came to work in 1953, up to and through August 1, 1957, for the following questions:

I ask you first if during that period the Clorox Chemical Company ever utilized or distributed any price reducing coupons to the consuming public? A. Yes.

Q. When? A. In 1956.

Q. Can you tell us where, in this vast collection of records, we can find that?

Mr. Royall: Objection.

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(Tr. p. 1415)

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Hearing Examiner Haycraft: Well, I will ask the witness if he can produce anything to support that statement.

Do you have a recollection of that?

The Witness: Because of my unfamiliarity with these documents, sir, I can't say that I could produce them now.

Mr. Royall: Well, your Honor, I don't think the witness understands.

You don't mean right at this minute; you mean you could produce it at some time later?

The Witness: Oh, yes.

Hearing Examiner Haycraft: Just let it ride at that.

Mr. Tincher: All right, sir.

Mr. Royall: He says he can produce it at some time later.

By Mr. Tincher:

(Tr. p. 1416)

Q. Now, I will ask you the same question with respect to price saving labels such as were used in Erie, Pennsylvania, and Evansville, Indiana, in the fall and winter months of 1957 by The Clorox Company. A. No, sir.

Q. The same question with respect to——

Mr. Royall: Your Honor, I don't know what the same question is, whether he can find it in these records——

Hearing Examiner Haycraft: He didn't ask that question. That was my question. He asked the question whether or not from the period 1953, up to August 1957, such a thing happened.

Mr. Royall: Well, if that's the question, I think it ought to be clear in the record.

Hearing Examiner Haycraft: I think it is clear, Mr. Royall. I think the witness understood that question.

Mr. Tincher: All right. Now, let's see. I have an unanswered question.

Hearing Examiner Haycraft: He said——

The Witness: I said "No" in answer to your last question.

By Mr. Tincher:

Q. Which was on price reducing labels? A. Yes.

Q. All right, sir. Now, during that same period of time did

(Tr. p. 1417)

The Clorox Company give any——

Hearing Examiner Haycraft: Clorox Chemical.

Mr. Tincher: Right, sir. Thank you.

By Mr. Tincher:

Q. Did The Clorox Chemical Company give or distribute any premiums to housewives or consumers, either self-liquidating or otherwise? A. No.

Q. And during that same period of time did The Clorox Chemical Company have any consumer contest, and by that I mean a contest where consumer or purchaser could send in a label or something of that nature and win a larger prize? A. No.

Q. And during that period of time did The Clorox Chemical Company distribute or mail free samples of Clorox to the consuming public as distinguished from special groups, such as new mothers, and that sort of thing? A. Yes.

Q. And what was that occasion? A. That was through cooking school demonstrations essentially.

Q. Yes, sir. I was attempting to distinguish from that sort of thing as being a special situation. What I had in mind was just to the general public, house to house or mailing through the mails, just for the public at large;

(Tr. p. 1418)

delivering door to door. A. No.

Q. And during that same period of time was Clorox ever tied in with another product, and by that I mean was Clorox given free or at half price if somebody bought the other product, or was the other product given free or at half price if somebody bought Clorox? A. No.

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(Tr. p. 1421)

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By Mr. Tincher:

Q. All right, sir. Now, I would like to ask you a question and, without revealing any figures on this record, accord-

ing to my computation the amounts given there for advertising for the month of July 1957, which is the only month breakdown on that exhibit, or any that we have to my knowledge, appear to be considerably higher than the yearly totals which are given, divided by 12. Can you explain to us why the amount there in July would be considerably higher than the average monthly amounts for the years given? A. The month of July is one of our largest selling months. The bleach industry as a whole reaches a peak in July and August, and at that time we advertise because the business is generally higher at that time.

Q. Does The Clorox Company have any national television shows, as distinguished from television spots? A. No.

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(Tr. p. 1422)

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Q. Mr. Shaver, can you give us the periods of time in Erie, Pennsylvania, and Evansville, Indiana, where the reduced price label of Clorox was offered by the Clorox Company? A. In Erie it was during the month of November; Evansville, it was February, I believe.

Hearing Examiner Haycraft: February of this year?

The Witness: Yes, sir.

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(Tr. p. 1424)

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Q. Now, was there an offer of a premium in Erie after the price off the label situation? A. Yes, there was.

Q. And when did that take place? A. In the month of January, 1958.

Q. Now, the same question with respect to Evansville?

A. No, there was no self-liquidating premium offered in Evansville.

Q. Was there a free premium offered? A. No.

Hearing Examiner Haycraft: What was the offer?

The Witness: It was two, four, and six cents off.

Hearing Examiner Haycraft: On the bottle?

The Witness: On the bottle, yes.

Hearing Examiner Haycraft: To the consumer?

The Witness: To the consumer, yes, sir.

Hearing Examiner Haycraft: For what period of time?

(Tr. p. 1425)

The Witness: Approximately one month.

Hearing Examiner Haycraft: The month of February?

The Witness: The month of February, sir.

By Mr. Tincher:

Q. And that is the only special situation above and beyond ordinary prices that occurred in Evansville from the time Clorox was purchased by The Procter & Gamble Company? A. I believe we equalized the advertising effort in that area.

Hearing Examiner Haycraft: What do you mean by that?

By Mr. Tincher:

Q. What does that term mean, sir? A. What I mean by that is that we increased our advertising effort to the level established by a competitor, but no higher.

Q. Would that be television or radio? A. Television, newspapers.

Hearing Examiner Haycraft: I still don't understand what you mean by "equalize."

The Witness: If you can establish what your competitor is investing in advertising in an area and your budget is

running lower than that figure, it would be equalizing to bring it up to approximately the same amount of money spent by your competitor.

(Tr. p. 1426)

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By Mr. Tincher:

Q. The premium was an ironing board cover, sir; is that right? A. Yes, we had an ironing board cover premium.

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(Tr. p. 1432)

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Q. Now, Mr. Shaver, would you help us some more, sir, and tell us what products the Fall housecleaning drive is intended to promote?

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(Tr. p. 1433)

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A. The housecleaning promotion was intended to promote Clorox. That was the product.

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Q. Well, of course, that is obviously correct, sir, but the Fall and Spring housecleaning drives refer to related products which can be tied in and boost sales of all the products, do they not? A. Yes. We never use the word "tie-in." We speak of related items.

Q. I see, sir. And what are those related items? A. Generally high margin items such as brooms, mops, waxes, polishes.

Q. That is all? A. Yes.

Hearing Examiner Haycraft: Are they also slow-moving?

The Witness: Generally slow-moving items.

Hearing Examiner Haycraft: The idea is that Clorox will help them to sell?

The Witness: We base quit a bit of our presentation that Clorox is a traffic builder in the store.

(Tr. p. 1434)

The consumer isn't likely to get back into the broom section very often unless he is looking for a specific product that has a faster rate of turnover, so we use the housecleaning promotion, essentially to stimulate sales and essentially in the stores where there isn't much traffic or movement.

Hearing Examiner Haycraft: Now, that must be an appeal to the distributor and the wholesaler rather than the consumer?

The Witness: Yes.

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(Tr. p. 1436)

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Q. Now, are you familiar with the new type bottles introduced by the Clorox Company? I have reference to the quart-size bottles. A. Yes, I am.

Q. And when were those bottles introduced? A. I believe in January of 1958. However, I don't think your use of the word "introduced" is right. I think that it would be "tested."

Q. Right, sir. Splendid. And when were they tested? A. January 1958.

Q. And where were they tested, sir? A. They were tested in Atlanta and in Buffalo.

Q. Were they tested in Erie, Pennsylvania, and Evansville, Indiana? A. No.

Hearing Examiner Haycraft: What is the difference between them?

(Tr. p. 1437)

The Witness: A very minor addition to the top of the bottle. It has a loop connected to the neck of the bottle and makes it possible for the bottle to be handled more conveniently and poured more conveniently.

Hearing Examiner Haycraft: You mean a little handle that you put your finger through, like a syrup bottle?

The Witness: That's correct. We wanted to test how effective it would be for Clorox.

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(Tr. p. 1441)

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By Mr. Tincher:

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Q. Now, Mr. Shaver, in 1958 the Clorox Company ran two-page ads in color in trade journals, did it not? A. Correct.

Q. Now, isn't it a fact that The Clorox Chemical Company had not followed such a procedure? A. That is incorrect. The Clorox Company had used two pages in color in trade papers since 1956.

Hearing Examiner Haycraft: Clorox Chemical Company?

The Witness: The Clorox Chemical Company.

By Mr. Tincher:

Q. And are those trade papers the same seven trade papers? A. The same seven trade papers.

Hearing Examiner Haycraft: The trade papers of wholesale grocers?

The Witness: Do you want the names of them, sir?

Hearing Examiner Haycraft: No, just in general, by trade.

(Tr. p. 1442)

The Witness: Just trade papers sent to the various types of different trade store operators. There is chain store merchandising and super market merchandising and cooperative and voluntary groups, independents.

By Mr. Tincher:

Q. When did The Clorox Company—when did Clorox start being featured by Clorox ads in newspapers? A. In my knowledge, in 1956; and probably previously; although I am not sure of that.

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(Tr. p. 1444)

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Q. Mr. Shaver: While we are speaking of full page magazine ads, what determines the frequency that these ads are run? In other words, we had a period from August through March

(Tr. p. 1445)

where only during one month they were run; is that correct? A. That's correct.

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Q. I say the full page ads in these four magazines will appear in the April issues, the current issues? A. April, May, and June.

Q. Three months? A. Yes.

Q. And then will they taper off again and not appear until—— A. No. They will continue. You have to remember that in the entire year of 1957 we alternated our advertisements so that any one magazine was used every other month. We had a list of 14 magazines. In January

we were running seven, in February another seven, in March back to the first seven. So we were only in six times a year in any magazine for the last five years.

From January '58, we will be running eight times in four magazines, a smaller number of magazines.

Q. And the ones dropped are the ones with the smallest circulation, are they not? A. I'd have to see the circulation figures to answer that. That was no criteria.

Q. I didn't asked you if it was a criteria. As a matter of

(Tr. p. 1446)

fact, you don't know?

Hearing Examiner Haycraft: I think his question was what is the policy of determining where it appears.

The Witness: The type of coverage of the magazine. For example, some magazines are called "shelter magazines" and some feature recipes for womens service purposes. They are selected on the basis of the audience that reads them, with a minimum of duplication. We would not take two of the same type of magazine.

By Mr. Tincher:

Q. Would another factor which might have contributed to this, sir, have been the fact that the four magazines finally selected were magazines in which The Procter & Gamble Company advertises very extensively. A. That had absolutely nothing to do with the decision. What you say may be true, but I do not even know that it is true.

Q. While we are on that point, let me ask you: Do you or anyone else in The Clorox Company have any advance schedules or information from Procter & Gamble or from any of its advertising agencies about when, where, or how Procter & Gamble will be advertising? A. Nothing whatsoever.

Q. And do you furnish any such information to Procter & Gamble?

(Tr. p. 1447)

A. After our decision has been made we notify them.

* * * * *

Q. You, of course, as advertising manager, Mr. Shaver, are familiar with Clorox advertisements and recognize them when you see them? A. Yes, I should recognize them.

Mr. Tincher: Mr. Reporter, would you please mark as Commission's Exhibit 420 for identification Page 22 of the Times News of Twin Falls, Idaho, Thursday, October 24, 1957, and I will tell counsel so he will know what I am relying on, that I am relying on the entire food ad of the A. G. Food Markets.

(Tr. p. 1448)

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By Mr. Tincher:

Q. Yes. My question is this: Is that not a Clorox advertisement in that ad? A. No. This is an A. G. advertisement.

Q. I am not asking you who sponsored it. I am asking you if that is not an advertisement of The Clorox Company products? A. No, sir, it is not. It is an advertisement of this

(Tr. p. 1449)

food market.

Q. That is who it is sponsored by? A. Right.

Q. We are both agreed on that. Now, my question is this: Isn't that advertising the product Clorox rather than Baby Ruth or something like that? A. It is advertising Clorox.

Q. And you recognize it as the advertising of Clorox, regardless of who sponsored it? A. Correct.

Mr. Tincher: I offer the advertisement, sir.

Mr. Royall: Let me see it. Your Honor, we object to that. We have no control over what they advertised in a particular store.

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(Tr. p. 1451)

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Hearing Examiner Haycraft: Well, do you notice the item in this ad entry blank here for Procter & Gamble, $60,000 Lifesaver contest——?

Mr. Royall: I didn't see that, your Honor.

Hearing Examiner Haycraft: When you read that, you might not have any objection to the ad. On that ground anyway. You might object to it on some other ground.

Mr. Royall: I am going to withdraw my objection, your Honor, and let my argument go to the weight, on the question that he has offered it for.

Hearing Examiner Haycraft: All right. The objection is overruled and Commission's Exhibit 420 is received in evidence.

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(Tr. p. 1452)

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By Mr. Tincher:

Q. Do you have any knowledge of where the Clorox Chemical Company or The Clorox Company ranks in the list of the

(Tr. p. 1453)

nation's advertisers? A. The Clorox Company was among the 100 top advertisers in the country in 1956.

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By Mr. Tincher:

Q. What is the basis of your knowledge, sir? A. A compilation made by "Advertising Age" magazine.

Hearing Examiner Haycraft: Where does Procter & Gamble stand in that?

Mr. Royall: Objection, your Honor.

Hearing Examiner Haycraft: Objection overruled.

The Witness: Do I have to answer your question, sir?

Hearing Examiner Haycraft: Yes.

The Witness: Not the first.

Hearing Examiner Haycraft: I am asking you where it did stand.

Mr. Royall: If he knows.

Hearing Examiner Haycraft: Because I was about to take official notice of that. I have read somewhere—I don't know where it was, whether it was "Fortune" magazine or

(Tr. p. 1454)

some other place—that they were.

Mr. Tincher: Maybe it was our complaint, sir.

Hearing Examiner Haycraft: Where is your recollection of where they did stand?

The Witness: Second or third, I believe.

Hearing Examiner Haycraft: Who was the largest, who was first?

The Witness: General Motors.

By Mr. Tincher:

Q. That was for 1956? A. Yes, sir.

Hearing Examiner Haycraft: '57?

The Witness: I believe it was '56. I am not sure. I can't answer on '57.

Mr. Royall: Will you give me a series of objections, an objection to this whole line?

Hearing Examiner Haycraft: You may have an objection, a running objection to all of them. And it is overruled.

By Mr. Tincher:

Q. The "Advertising Age" and others show that Procter & Gamble was first and General Motors was second, do they not?

Mr. Royall: Objection.

Hearing Examiner Haycraft: I will sustain the objection.

(Tr. p. 1455)

I don't know, I think it is true, I really don't know, but I think you fellows are ahead right now.

Mr. Royall: I don't know, sir.

Hearing Examiner Haycraft: I don't know, either, but I have read it somewhere.

Mr. Royall: It would be utterly immaterial. That is not the issue in this case.

Hearing Examiner Haycraft: It is just one little piece of evidence they are putting in.

Mr. Tincher: This is our "Bigness is Badness" case.

Mr. Royall: I am glad you told us that. I suspected that is what it was.

Mr. Tincher: I quoted the Chairman of your Board.

Mr. Royall: I think that is all there is in it, too.

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(Tr. p. 1456)

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By Mr. Tincher:

Q. Since January of 1958 every advertisement placed for Clorox by Honig-Cooper Advertising Agency contains the—with newspapers, of course—contains the notation,

and I will quote, if I may: "Space covered by this order is for the Clorox Company, a wholly owned subsidiary of The Procter & Gamble Company. Rates as per blanket contract."

(Tr. p. 1457)

Is that correct? A. Yes.

Q. And that information is utilized by the agencies involved and the newspapers to compute the discounts which should be applied; is that correct?

Mr. Royall: I object.

Hearing Examiner Haycraft: Overruled.

A. Yes.

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(Tr. p. 1462)

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By Mr. Tincher:

Q. Now, Mr. Shaver, what has been the savings reported to The Clorox Company on radio advertising by virtue of discounts and Procter & Gamble product grouping?

Mr. Royall: Your Honor, before he answers this, I want to say that Mr. Shaver said in answer to one of their questions, and as I previously intimated in a statement to the Court, there are a number of computations that were made after Mr. Morgens' examination and when he did not have full information, which we will offer when our evidence comes on. I don't know whether Mr. Shaver knows anything except what they have told him, but if he did we would prefer to give, as we planned, that information with supporting data.

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(Tr. p. 1463)

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By Mr. Tincher:

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Q. What has been reported to you by the Procter & Gamble Company?

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Hearing Examiner Haycraft: What have they reported to you, Mr. Shaver?

The Witness: A saving of about $500 in radio, around $50,000 in magazines, $86,000 in television.

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(Tr. p. 1469)

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By Mr. Tincher:

Q. As Commission's Exhibit 422 for identification, a proof sheet of a Clorox ad, and written in ink at the bottom December 15 and 16, 1955, and as Commission's 424 for identification a proof sheet of a Clorox ad written in ink at the bottom, November 17 and 18, 1955.

(The papers referred to were marked Commission's Exhibits 422, 423, and 424, respectively, for identification.)

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(Tr. p. 1471)

Hearing Examiner Haycraft: Commission's 422, 423, and 424 may be received in evidence.

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(Tr. p. 1483)

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Mr. Tincher: Mr. Reporter, will you please mark as Commission's 429 A, B, and C, a three-page stapled document, Page A being dated January 24——

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Page A being dated January 24, 1958, addressed to the Paul P. Kroehle Company at Cleveland, Ohio. There is a street address if you want it, sir

And Page 2 bearing the identification that Neil Shaver is the author.

Hearing Examiner Haycraft: That is B?

Mr. Tincher: That is right, sir. And Page C being attached to the letter, being a promotional piece to be sent —and entitled "To Be Sent" on distributor's letterhead to trade contacts only in areas served by promotion.

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(Tr. p. 1484)

(The papers referred to were marked Commission's Exhibit 429 A, B, and C, for identification.)

By Mr. Tincher:

Q. Now, Mr. Shaver, I will hand you Commission's Exhibit 429 A, B, and C, and ask you if this is a letter you sent to this particular distributor.

* * * * *

The Witness: Yes, in answer to your question.

Mr. Tincher: I will offer the exhibit now, sir.

Hearing Examiner Haycraft: Any objection?

Mr. Royall: No objection, your Honor.

Hearing Examiner Haycraft: It may be received as Commission's Exhibit 429 A, B, and C.

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(Tr. p. 1485)

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Q. I will show you Commission's Exhibit 407 listing Clorox TV spots. You will notice it starts with the Clorox Chemical Company on July 22, '56. Is that the exact time The Clorox Chemical commenced the use of TV spots?

A. That is correct.

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(Tr. p. 1486)

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Mr. Tincher: Mr. Examiner, before we finish with this witness, counsel gave me a number of proofs of newspaper advertisements on the issue of what I termed the "family togetherness." After looking at these various advertisements I find that my statement to the witness suggesting that this form appeared first in December of '57, or at least some time subsequent to the acquisition, is incorrect and that the family theme had been used prior to the acquisition. And I make that statement with reference to the exhibit given me by counsel.

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(Tr. p. 1487)

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CROSS-EXAMINATION

By Mr. Royall:

Q. Mr. Shaver, you produced three items at the beginning of the hearing this afternoon. Do you know whether or not there were or might be other promotional items of the type described in the testimony this morning prior to 1957 and prior to the time that you came in with the company? A. Yes.

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(Tr. p. 1488)

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Q. Do you know whether or not there are others? A. Yes, I do know. There were others.

Q. But you do not—you cannot identify them or describe

them at this time; is that right—fully? A. I could describe some of them, yes, sir.

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(Tr. p. 1489)

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REDIRECT EXAMINATION

By Mr. Tincher:

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(Tr. p. 1490)

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Q. You say that prior to your employment, in what month of '53? A. March.

Q. Do you know that prior to that there were other promotions? A. Yes.

Q. And in what years were they? A. They extended, to my knowledge, from 1930 to 1952, throughout the entire period.

Q. Were they the same type of promotions we have just been discussing, the cooking schools, the home art guilds? A. No. For example, there was a quart bottle of Clorox given free with the purchase of a half-gallon bottle.

Q. When? A. 1944.

Q. Let me ask you, then, sir. What, of your knowledge, was given along those lines in 1952 and in the early part of 1953, prior to the date of your employment? A. There were trade allowances.

(Tr. p. 1491)

Q. I am talking about things that reached the consumer directly, sir, things like special prices to consumers, special allowances to consumers, premiums or contests for consumers.

* * * * *

A. In Buffalo, New York, there was a coupon allowing so much off of each bottle of Clorox——

Q. And when was that, sir? A. I cannot answer that.

Q. You don't know whether it was ½52 and ½53 or not? A. I am quite sure it was before those dates.

Q. Now, I am going to give you all the time you need, sir. Have you finished your answer?

(Tr. p. 1492)

A. Are you still confining me to '52-'53?

Q. Right. A. No, I can't think of any.

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(Tr. p. 1494)

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Bernard F. Trimpe,

recalled as a witness for the Commission, having been previously sworn, testified further as follows:

FURTHER DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Trimpe, can you tell us why the ironing board cover premium was offered in the Erie County area and why it was limited to that area? A. Yes, I can.

Q. All right. Tell us, please. A. One of our competitors decided to——

Hearing Examiner Haycraft: Who was it?

The Witness: Purex.

Hearing Examiner Haycraft: All right.

By Mr. Tincher:

Q. Go ahead. A. Purex came into Erie County, Pennsylvania, with quite

(Tr. p. 1495)

an extensive advertising promotional consumer coupon campaign together with the introduction of a new type container, and this was the first time they had entered that marked, and their intention was, according to their sales people in the trade, that this was a test for them to further enter into the Eastern markets of liquid bleach.

* * * * *

A. So we looked at it very carefully and after we had studied from the announced campaign advertising in others, coupons and so forth, what we should do, we took immediate steps to try to protect our business in that area, and we did do that and one of the things we did was in February we announced an ironing board cover premium and limited to that territory because we were trying to defensively protect

(Tr. p. 1496)

our business in the Erie County area.

By Mr. Tincher:

Q. Now, this knowledge of what the intent was was based on what somebody told you. Who was that? A. Well, our representative in the area, Paul E. Kroehle Company.

Q. And he got the information allegedly? A. Mr. Roy Osmond was the general Manager of that operation, and he provided us with a copy of the Purex brochure, which stated—showed a picture of the new bottle and stated on the brochure the fact that they were going to do this certain amount of advertising. It stated explicitly on the brochure how much.

Q. No. I am talking and limiting myself now to the intention of going elsewhere. A. I am sorry.

Q. That was—— A. He called on the direct buyer, and the direct buyer gave him this brochure and in the process of that stated that it had been told to him that this was a test on the part of the Purex Company and that they had definite plans to use this if it were successful to enter into the Eastern markets.

Q. The direct buyer being a grocer? A. A Chain or a wholesaler. I don't remember which.

Q. Do I summarize it correctly when I say what you know is

(Tr. p. 1497)

based allegedly on what a Purex man told a dealer, who in turn told your distributor, who in turn told you? A. Yes, that's correct.

Mr. Tincher: Mr. Examiner, I certainly renew my motion to strike.

Hearing Examiner Haycraft: Motion denied.

Is that what prompted you to do what you did?

The Witness: That is what prompted us to do what we did.

Hearing Examiner Haycraft: That's the answer to it. I can't take it as the proof that either the Purex did what——

Mr. Tincher: I see you are right.

Hearing Examiner Haycraft: I am taking it for the reason for this witness doing what he did, which makes it an exception to the hearsay rule.

Mr. Tincher: The statement was made, and not that it is true; right?

Hearing Examiner Haycraft: Yes.

Mr. Tincher: I didn't realize that, sir. I am sorry.

By Mr. Tincher:

Q. Now, of course, the Purex introduction was in October or November of 1957, wasn't it? A. October, yes.

(Tr. p. 1498)

Q. And you first came out with the 3, 5 and 7 cent off? A. Yes.

Q. And that lasted awhile before this last introduction or the ironing board cover? A. Correct.

Q. Did you do anything after the ironing board cover campaign? A. No. We have our Spring promotion which is breaking in the North this next week, I guess, and it has a self-liquidating premium on it.

Q. How long did the ironing board cover last, or was it still in the last campaign on it? A. It lasted longer than we wanted it to, but—no. It was through about the time we introduced our Spring campaign.

Q. Just about that time? A. Yes. A little before that.

Hearing Examiner Haycraft: Have you got an ironing board cover in this Spring campaign?

The Witness: No. We have a dampening bag.

By Mr. Tincher:

Q. Can you tell us, sir, if this was used in Evansville, Indiana? A. No, it was not used in Evansville, Indiana.

Q. How about Wichita or Louisville? A. No.

Q. Just the Southeast part of the United States and Erie,

(Tr. p. 1499)

Pennsylvania? A. And Erie, Pennsylvania, that's correct.

Q. Mr. Trimpe, I will show you Commission's Exhibit 403 and refer you to the category entitled "Consumer—Cents Off" and I will inform you this exhibit is in camera, so you don't mention any figures.

* * * * *

A. This is more in the accounting end, but I think it represents the amount of money less realization, is what we call it. I am sure it is, because it's from August to December and that's what we call them, consumer cents off,

(Tr. p. 1500)

and it represents how much less in dollars we received as a result of having the labels in that market.

Q. All right, sir. Thank you. And let me refer you to the category entitled special packs and ask you what that category means? A. Well, it is in contrast to the other. This represents, I guess, the cost of packing the ironing board cover materials down in our plants in the Southeast and—let's see.—August to December—I suppose the extra costs, if any, of packing the 3, 5 and 7 cent labels in Erie, and I guess that would be it.

Hearing Examiner Haycraft: Let's see the exhibit.

The Witness: Yes, sir.

Hearing Examiner Haycraft: You said you guess. Can you do any better than guess?

The Witness: Well, he said not to mention figures. The first one I am very certain represents the amount of less realization and sales. And I say guess only because I don't know the exact figure. But it looks about like the figure which was called to my attention as the cost of preparing those packs, and I think that's correct.

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(Tr. p. 1501)

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By Mr. Tincher:

Q. Mr. Trimpe, you testified yesterday that the premium for the Spring-'58 drive would come from Procter & Gamble in Cincinnati. Let me ask you if the redemption on the ironing board covers did not also come from Procter &

Gamble in Cincinnati, Ohio, or was handled by Procter & Gamble? A. Yes. That was handled by their redemption center.

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(Tr. p. 1509)

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Mr. Tincher: Mr. Reporter, will you please mark as Commission's Exhibit 437 a document entitled "Freight as Percentage of Gross Sales Price per Case." My understanding is—and please correct me if I am wrong, Mr. Royall—we

(Tr. p. 1510)

may state that this is prepared from the books of the Clorox Company and The Clorox Chemical Company showing the information indicated thereon for the years indicated.

Mr. Royall: That's all right.

(The paper referred to was marked Commission's Exhibit 437 for identification.)

Hearing Examiner Haycraft: Do you offer it in evidence?

Mr. Tincher: Yes, sir, I now offer it.

Hearing Examiner Haycraft: Any objection?

Mr. Royall: No, sir.

Hearing Examiner Haycraft: There being no objection, Commission's 437 for identification is received in evidence.

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(Tr. p. 1516)

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Room 229
Federal Building,
Los Angeles, California.

April 21, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 1518)

PROCEEDINGS

* * * * *

Alan C. Stoneman

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: What is your full name?

The Witness: Alan C. Stoneman.

* * * * *

DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Stoneman, you state for the record, please, what company you are affiliated with? A. Purex Corporation, Ltd.

(Tr. p. 1519)

Q. What is your position with that company, sir? A. I am president of the Purex Corporation.

Q. How long have you been president? A. Since October of last year.

Q. How long have you been with the Purex Company? A. For sixteen years.

Q. Can you describe for us briefly your duties during that period of time, and your experience? A. I joined the company in 1941 as vice president of the wholly-owned subsidiary, Rayo Chemical Corporation. I became an officer of the Purex Corporation in 1944. I was elected

executive vice president and director in 1946, and president in October of 1957.

Q. Can you tell us, once again as briefly as possible, what your duties consist of as president of the Purex Corporation? A. My duties are to direct the operations of the corporation within the policies and the budgets approved by the Board chairman and the Board of Directors, and to coordinate the activities of all the operating heads, including sales, advertising, market research, production, production research, and finance.

Q. Can you tell us the length of time that the Purex Corporation, Ltd. has been in business? A. Purex Corporation, Ltd. was organized in 1930. It was the off-shoot of the Purex Chemical Company, which dates back

(Tr. p. 1520)

to 1924.

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Q. That is the next question, sir. Mr. Stoneman, can you

(Tr. p. 1521)

tell us in general terms the brand names of your products and the type of product for each brand? A. Purex original product as Purex Liquid Bleach. It also manufactures Drano, which is a bowl cleaner which is distributed regionally in the West. It also manufactures and distributes Dry Trend, which is a light duty synthetic detergent, and Liquid Trend, a light duty liquid synthetic detergent. Dry Bleach, Beads-O' Bleach is manufactured and distributed nationally. News, a heavy duty detergent is distributed locally.

* * * * *

Q. By locally, you mean in the California area? A. The California area and Arizona, and in addition, we have

Sweetheart soap, a nationally distributed toilet soap; Old Dutch Cleanser, a nationally distributed friction cleanser, and Blue White bluing, a combination synthetic bluing product.

Q. Is the Dutch Cleanser a powdered cleanser? A. Yes.

Q. And is Sweetheart soap a bar soap? A. That is a bar soap.

Q. Can you tell us, Mr. Stoneman, approximately what percentage of your company's total business is accounted for by the sale of liquid bleach?

(Tr. p. 1522)

A. It's about 27 percent; I think the exact figure is 27½ per cent currently.

Q. Can you tell us approximately what percentage—or let me ask you first, if I may, does your company produce private labels of bleach in addition to the bleach designated as Purex? A. Yes, it does.

Q. Approximately what percentage of your business is that? A. Less than one and a half percent.

Q. Does your company produce any commercial or swimming pool bleach? A. Yes, it does, in certain limited areas; Southern California, the Bay Area, that is, the San Francisco Bay area, and a small amount of it in Dallas, Texas.

Q. It that a sodium hypochlorite bleach? A. Yes.

Q. What percentage is the solution in it? A. You mean the strentgth of the solution or percentage of sale?

Q. The strength of the solution? A. It varies from 10 to 16 percent.

Q. Does the Purex Corporation consider the commercial bleach competitive with the household type bleach?

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A. No, we don't consider it competitive. It represents a

(Tr. p. 1523)

very small percentage of our sales, about one percent is all.

By Mr. Tincher:

Q. Can you tell where the Purex Corporation produces liquid bleach? A. Yes. We produce liquid bleach in South Gate, California, San Leandro, California; Tacoma, Washington; Dallas, Texas; Memphis, Tennessee; St. Louis, Missouri; and Atlanta, Georgia.

* * * * *

Q. Mr. Stoneman, in the Southeastern part of the country, do you have only the one plant at Atlanta, Georgia? A. Yes.

Q. Is there any particular reason, sir, for your company having different bleach plants at various points in the United States rather than having it at one central or one given point? A. Yes, there is a very good reason. Bleach is a very heavy commodity in relation to its selling price. A case of bleach weighs between 40 and 50 pounds and sells for about $2.00; hence, no plant can service an area more than—can service a radius of about 300 miles from the plant economically.

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(Tr. p. 1524)

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Q. Will you tell us what your sales area is in the United States for liquid bleach? A. Our sales area is substantially the area west of the Mississippi and south of the Ohio; but you must add to that area a portion of Wisconsin, Southern Illinois, and Southern Indiana. We do not sell in Pennsylvania and the Virginias.

Hearing Examiner Haycraft: You mean by that West Virginia and Virginia?

The Witness: We do not sell in Pennsylvania, the Virginias, the Carolinas or Southern Florida.

By Mr. Tincher:

Q. Mr. Stoneman, has your company ever computed or made any effort to compute the percentage of the United States population that resides within your sales area for liquid bleach?

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The Witness: We estimate that the population in our sales area represents about 48 percent of the national

(Tr. p. 1525)

population.

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Hearing Examiner Haycraft:

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Do you sell at all in New England or New York?

The Witness: No, sir, not liquid bleach.

Hearing Examiner Haycraft: You didn't mention it.

The Witness: When I excluded the area—south of the Ohio is a rather indefinite term, but we exclude Pennsylvania and the Virginias and all areas north of that.

Hearing Examiner Haycraft: With the exceptions that you have indicated?

The Witness: That's right.

By Mr. Tincher:

Q. Mr. Stoneman, you tell us, what are the competitive factors which your company faces in selling liquid bleach?

* * * * *

A. The competitive factors in the sale of liquid bleach are comparative to the competitive factors that exist in the

whole cleanser business or detergent business, and they are first advertising, and it's all types of advertising. Do you want them enumerated?

By Mr. Tincher:

Q. Yes, why don't you, sir? A. The television networks, television spots; radio network,

(Tr. p. 1526)

radio spots; newspapers, comics, Sunday supplements, magazines, color, and black and white; billboards.

Another important competitive factor is sampling, free samples. Coupons are important competitive factors, coupons that offer the consumer cents off on a purchase. The sales service or the merchandising service, that is ordinary by the manufacturer at the retail level, is an important factor; promotions, whether they be in the form of consumer promotions or dealer promotions, there are two types and there are many varieties of promotions. They are important competitive factors. The shelf space in retail stores is important and there are others, such as the quality of the package, the quality of the product, the price, and so on.

(Tr. p. 1527)

Q. Could you give us some examples of what you had in mind when you mentioned consumer promotions? A. Well, these promotions might take the form of ten cents off on a package. It might take the form of a half-price sale; two units for the price of one and a half. It might take the form of a one-cent sale, where four units are sold for the price of three, plus one cent; or three units are sold for the price of two, plus one cent. It might take the form of companion products: Ten cents off on your favorite pound of coffee if you buy a package of "X" brand.

You can go on indefinitely on that subject, so I don't think—if you needed any more illustrations, I will be glad to give them to you.

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(Tr. p. 1538)

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By Mr. Tincher:

Q. Mr. Stoneman, is your liquid bleach sold under the Purex brand name? A. Yes.

Q. Is it a sodium hypochlorite solution? A. Yes.

Q. Could you tell us the percentage of solution strength of it? A. It is labeled 5¼ percent. It is manufactured at slightly higher strength.

Q. What is the remainder of the product, sir? A. The remainder of the product is water.

Q. Are you familiar with whether other liquid bleaches which are offered for sale in your sales area are substantially or nearly the same product as yours?

(Tr. p. 1539)

A. Yes. The liquid bleaches are substantially the same product.

Q. Does the Purex bleach have any special or unique properties which aid it competitively? A. Purex bleach is manufactured by a process which we call the interfill process.

Hearing Examiner Haycraft: What?

The Witness: Interfill.

Hearing Examiner Haycraft: Will you talk a little louder, please?

The Witness: This is a secret process. It is a means of filtering the bleach to eliminate impurities. It aids the end product insofar as stability is concerned. It tends to main-

tain its shelf life at higher strength over longer periods of time.

By Mr. Tincher:

Q. Let me ask you if you have any knowledge of whether other liquid bleaches have any special properties or chemical advantages as far as quality is concerned? A. I don't know. The products, as they appear on the retail shelf, are substantially the same. The products made by the major manufacturers in the bleach field are substantially the same.

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(Tr. p. 1540)

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Q. Is the production of liquid bleach a highly technical process? A. No, it is relatively simple.

Q. Do you know if any new uses are being discovered or developed for liquid bleach? A. Liquid bleach is more than 150 years old, so, most of its uses are pretty well known.

Q. Does your company list the various uses of liquid bleach on its products' labels? A. Some of them.

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(Tr. p. 1541)

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A. The principal use for liquid bleach is in the laundry. It is used for the laundering of cottons and fine fabrics, if it is used in accordance with strict directions. Bleach is sodium hypochlorite, which is really a strong Dakin's solution. It is a powerful germicide. It can be used to disinfect garbage cans, toilets, kitchen sinks. It can be used—it is used by some people in bathing. It is used to clean out refrigerators; it is used in the sick room, in the washing of dishes and other utensils.

Is that sufficient?

Hearing Examiner Haycraft: Go ahead.

By Mr. Tincher:

Q. Of these various uses you have mentioned, sir, is there any principal use, or use for which the product is more commonly used than the other uses? A. The principal use is household laundry. That represents well over 50 percent of the bleach consumed in the household.

Q. Can you tell us just briefly, then, how it is used in the

(Tr. p. 1542)

laundry, and for what purposes? A. Well, it is used in stain removal, for the removal of stubborn stains, and, also, it is used to increase the whiteness or brightness of the clothes that tend to accumulate soil. Garments can be whitened with a combination of bleach and detergent more effectively than with detergent alone, or soap alone.

Q. Is the liquid bleach also used in the kitchen and the bathroom? A. Yes. I previously stated it was used in the kitchen sink. It is used in disinfecting around the kitchen, on the drain board. In the household toilets, the wash bowls, showers.

Q. Does the Purex Corporation manufacture its own bleach or does it convert or cut a stronger solution into household liquid bleach? A. We manufacture our own.

Q. Does your corporation have any product research facilities? A. Yes. We have a product research laboratory that covers about 8,000 square feet, and employes about 40 people.

Q. Does this laboratory work on all your products, including liquid bleach? A. Yes.

Q. Do you know how many liquid bleach producers there are in the sales territory of your liquid bleach? A. About 20 to 25.

(Tr. p. 1543)

Q. The same question with respect to the entire United States? A. From——

Hearing Examiner Haycraft: Is he going to be able to go beyond his own area?

Mr. Tincher: I don't know, sir; we will have to find out.

Hearing Examiner Haycraft: Are you familiar with areas outside of where you sell, yourself?

The Witness: Yes. We sell six products nationally, your Honor, so we have occasion to do market research in the entire United States.

Hearing Examiner Haycraft: For your bleaches?

The Witness: We sell dry bleach nationally.

Mr. Royall: What is the question, please?

(Question read.)

Mr. Royall: I want my objection noted.

Hearing Examiner Haycraft: All right; go ahead.

A. (continuing) From 35 to 50.

By Mr. Tincher:

Q. Is that in addition to those within—— A. No, that is the total.

Q. Which liquid bleach producer, if any, is the principal competitor of the Purex Corporation? A. Clorox.

Q. How many liquid bleach producers have national distribution

(Tr. p. 1544)

and sales of liquid bleaches? A. Just one, Clorox.

* * * * *

(Tr. p. 1545)

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Q. Mr. Stoneman, are you familiar with the price structure of the liquid bleach industry? A. Yes.

Q. Would you tell us once again, of course briefly as possible, just what that structure is and just how it operates? A. Well, the prices at which bleach is sold at the retail level tends to fall into three general bands. Purex and Clorox sell in the top bracket, they are the highest priced

(Tr. p. 1546)

products. The regional manufacturers tend to sell at a slightly lower price, but they tend to stay pretty much together in another price band; and the private labeled bleaches sell in another still lower band. So the price structure in the bleaches, there are three bands; there are the high-priced products, there are the independent regional manufacturers, and the private label group.

Q. Would you tell us how the Purex Corporation determines what prices it will charge for its liquid bleaches? A. Clorox is the leader in the field and sets the price ceiling beyond which Purex cannot sell as a practical matter.

Q. As a result of that situation, what do you do in setting your prices, sir? A. We tend to set our prices to follow Clorox's prices.

Hearing Examiner Haycraft: You mean your maximum?

The Witness: Our maximum, yes, sir. Our present price structure is identical to Clorox's.

Hearing Examiner Haycraft: How long has that been true?

The Witness: About two years.

By Mr. Tincher:

Q. You say it has been true for about two years, sir? A. Yes.

Q. What difference, if any, was there for a period three or four years preceding that two-year period?

(Tr. p. 1547)

A. I wouldn't want to trust my memory on that, Mr. Tincher. Purex tended to sell below Clorox's prices, never above them.

Q. Can you tell us, Mr. Stoneman, approximately what percentage of your liquid bleach is sold in grocery stores as distinguished from sales in various variety stores, drug-stores or any other type of outlet? A. About 95 percent of our liquid bleach is sold in grocery stores.

Hearing Examiner Haycraft: Do you sell directly to grocery stores?

The Witness: Yes.

By Mr. Tincher:

Q. Do the large grocery chains have their own private labels of bleach? A. Many of them do.

Q. Do you know if any of the large chains manufacture their private labels rather than buy the private labels from any other independent producer? A. I only know of one chain that manufactures, and that is Safeway here on the West Coast.

Q. From 1952 to the present, Mr. Stoneman, has the Purex Corporation ever lost a bleach account to a large chain because of that chain's private label? A. None that I know of.

Q. Does your corporation experience any difficulty in

(Tr. p. 1548)

obtaining shelf space for liquid bleaches? A. Yes. It's difficult to obtain shelf space for any product in the grocery store at the present time.

Q. With reference to that answer, is the problem any different for liquid bleaches than it is for any other grocery store product? A. No, not in my opinion.

Q. Is this difficulty in obtaining shelf space confined to any particular type or category of stores such as chain stores, independent or large chains, or is it just general? A. No, it's a general problem.

Q. Can you tell us in what section of the grocery store the liquid bleaches are generally found? A. Most grocery stores are divided up into product categories and all of them that I am familiar with have bleaches, soaps, detergents, cleansers, waxes, window cleaners, that whole product category of household cleansers is grouped together in one area of the store.

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(Tr. p. 1549)

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Q. Will you tell us, sir, what the experience of your company has been as to how liquid bleach space, shelf space is allocated by grocery stores?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Overruled.

(Tr. p. 1550)

A. Well, the allocation of shelf space in the grocery stores controlled by the competitive factors that were previously recited; the amount of advertising, the amount of promotion, whether or not the product is being couponed or sampled; what sort of consumer promotion might be offered, how much sales help is offered the store manager in re-allocating or re-arranging shelf space, all these things have a factor in determining which product gets the maximum shelf space.

By Mr. Tincher:

Q. Let me ask you if a liquid bleach producer having

related products such as soaps and detergents and cleansers would be any aid in obtaining shelf space?

* * * * *

A. Yes.

By Mr. Tincher:

Q. Will you explain why, sir?

* * * * *

A. There are a number of reasons. The multi-product manufacturer can maintain stronger sales reports at the retail level. This is an aid in getting shelf space. The multi-product manufacturer normally has lower sales cost, so he has more promotion power; this is an aid in getting shelf space. The more products a manufacturer in our general commodity class sells to the grocery store at a profitable

(Tr. p. 1551)

volume, of course, the more power he has to promote, and all these things are aids in getting shelf space.

* * * * *

Q. Can you tell us, sir, generally speaking, and of course you must be generally speaking, can you tell us generally how many liquid bleaches a grocery store will carry, and by that I mean how many brands? A. Depending on the size of the store and turnover in the market, from two to four. A small retail store might carry a couple of sizes in two brands, whereas a large store might carry three or four—three or even four sizes in four brands.

Q. Is this true also, let me ask you, of the chains such as Safeway, for example, who had their own private label bleaches?

* * * * *

A. Yes.

Hearing Examiner Haycraft: How many sizes are these bleaches sold in?

The Witness: Four in some areas, and three in many others. In the South where you have a lower income group, you sell pints, because they can sell it for 10 or 11 cents a unit. In the North, very few markets except some markets accept pints. The other sizes are quarts, half gallons and gallons.

(Tr. p. 1552)

There has been a fifth size, but it isn't too important; it's a three-quart bottle

By Mr. Tincher:

Q. Would you tell us, sir, how the Purex Corporation goes about attempting to get shelf space for its liquid bleaches?

* * * * *

A. Well, like all other manufacturers, we put our best foot forward and try to persuade the retailer to give us as much shelf space as we think we are entitled to on the basis of the sort of service we give him, kind of product we give him, the merchandising support we give him, and the amount of advertising we can allocate to our product.

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(Tr. p. 1558)

* * * * *

Q. Would you tell us which of your products competes with a Procter & Gamble product and in each instance, the name by brand of your product and the name by brand of Procter & Gamble's product or products?

* * * * *

A. Our products liquid and dry Trend compete with Procter &

(Tr. p. 1559)

Gamble's products in the detergent field, Joy, Dreft, Ivory Snow, Ivory Flakes.

Our product, News, competes with Procter & Gamble's heavy duty products, Tide, Cheer, Oxydol.

Our product Old Dutch Cleanser competes with Comet, Procter & Gamble's Comet.

Our product Sweetheart soap competes with Procter & Gamble's toilet soap products, which I believe are Zest, Camay; Zest and Camay.

Those products represent about 85 percent——

Mr. Royall: Objection.

Hearing Examiner Haycraft: Overruled.

Mr. Royall: I move to strike the last part of his answer; it wasn't responsive.

Hearing Examiner Haycraft: Let's see what his answer is.

The Witness: My answer was, Your Honor, those products—in summary, those products represent about 85 percent of Purex's business.

Mr. Royall: Motion to strike.

Hearing Examiner Haycraft: Motion denied. You mean of their soap and detergent business?

The Witness: Of our total business.

Hearing Examiner Haycraft: Total?

The Witness: Yes, sir.

(Tr. p. 1560)

Hearing Examiner Haycraft: That means 15 percent for Purex bleach?

The Witness: No. Purex bleach competes, of course, with Clorox, which is a Procter & Gamble brand.

Hearing Examiner Haycraft: What is the 85 percent? I don't get it.

The Witness: Well, it's those——

Hearing Examiner Haycraft: What percentage of your total business is composed of Purex?

The Witness: Twenty-seven percent.

Hearing Examiner Haycraft: You are including then, as I understand it, you were including your Purex bleach products with the others?

The Witness: That is correct, sir.

Hearing Examiner Haycraft: I understand.

* * * * *

By Mr. Tincher:

Q. In selling your products, sir, does the Purex Corporation sell to brokers or distributors or do you have a direct sales

(Tr. p. 1561)

force?

A. Presently Purex has a direct sales force, and prior to October of '56 it sold through brokers. It had a combination of direct sales and brokers.

(Tr. p. 1562)

Q. Do you use any brokers today in the sale of your products? A. Yes. We use brokers in some thinly-populated areas. There are the sales territories that headquarter in Butte, Montana and Denver, Colorado; Phoenix, Arizona; El Paso, Texas; and Lexington, Kentucky.

* * * * *

(Tr. p. 1563)

Q. You tell us why, sir, if there is any reason, you changed from the brokerage system to the direct-sales system?

* * * * *

A. We changed for two major reasons. One was to reduce our sales cost, and the other was to create a situation under which we had more control over the sales efforts that were applied to the individual retail store and the merchandising effort that was applied to the store.

* * * * *

(Tr. p. 1564)

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Q. Will you tell us, sir, how your liquid bleach is distributed to your customers? A. Our liquid bleach is distributed directly to direct buyers from our manufacturing plants in carloads or truckloads or through warehouses to purchasers that are outlying some distance from our manufacturing plant.

Q. Does the Purex Corporation pay the freight to the customer? A. Yes. We sell all liquid bleach f.o.b. customer's dock.

* * * * *

Q. I believe you mentioned a moment ago, Mr. Stoneman, that you had two reasons for changing from brokers to direct, and one of those you first gave was to reduce the cost to the Purex Corporation. Would you tell us if the change did result in a reduced sales cost?

(Tr. p. 1565)

* * * * *

A. Yes, it has.

* * * * *

Q. Has the Purex Corporation, either at the present time or in the recent past of a year or so, considered expanding its sales territory for liquid bleach to include the entire nation? A. Yes.

Q. Has such an expansion been made? A. No.

Q. Can you tell us why, if there is a reason?

* * * * * *

A. The margin—there is a profit margin in liquid bleaches small, and a capital investment, while it is not great in each plant, a substantial number of plants would be required for Purex to cover the balance of the United States. Because of the narrow margin in—or the small margin of profit, we have elected to use what capital funds we have available in other areas.

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(Tr. p. 1567)

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Q. Does the Purex Corporation receive in-store promotion on its liquid bleaches in grocery stores? A. Do we receive——

Q. Yes. A. Yes. We seek them, and sometimes we receive them.

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(Tr. p. 1569)

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Q. Does the Purex Corporation give merchants selling its bleaches any free merchandise prizes?

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(Tr. p. 1570)

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A. Yes, occasionally.

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(Tr. p. 1571)

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Q. Thank you, sir. You testified a while ago, sir, about the three levels of prices within the liquid bleach industry—strike that.

Is the wage factor to persons who produce the liquid bleach an important segment of the selling cost of the bleach,

(Tr. p. 1572)

sir? A. Not with Purex Corporation. Our bleach operation is highly mechanized. Direct labor cost is relatively an unimportant factor.

Q. Do you have union labor, sir? A. Yes.

Q. Does the Purex Corporation have any interest in or control over any other liquid bleach producer? A. No.

Q. Can you tell us, Mr. Stoneman, approximately what percentage of your sales costs, of your selling price, rather, is constituted by the factor of freight? A. Yes. It is about 14 percent on liquid bleach.

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(Tr. p. 1573)

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Q. You already mentioned, sir, about the competition with the Clorox bleach. Will you tell us what strength and significance that competition is as far as your company is concerned?

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(Tr. p. 1574)

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A. The strength and significance of Clorox competition is substantial. Clorox is the strongest brand in the market, doing roughly 48 percent of the dollars, 37 percent of the units.

Our brand does about 16 percent of the dollars, and 13 percent of the units.

Whenever a brand has this strong a market position, it is, I think, to be concluded that its competition is significant.

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(Tr. p. 1575)

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Q. Now, Mr. Stoneman, are you familiar with the liquid bleach situation in Erie, Pennsylvania, and also in Evansville, Indiana, during the latter part of '57 and the first part of 1958? A. Yes.

Q. Are you familiar with the price reduction labels on the Clorox bleach, for example, in Erie, Pennsylvania, three cents off on quarts, five cents on half gallons, and seven cents on gallons? A. Yes.

Q. Now, let me ask you if that situation is limited to a certain geographical area? A. Yes. Our Erie, Pennsylvania, was a test market appearance. We went into the Erie market where we were not distributors or sellers of liquid bleach, to test a new style package, a new label, and a new product. Our test operation was limited to Erie County, and so far as I know the price reduction campaign of three cents, five cents and seven cents off the label on quarts, halves and gallons respectively was also limited to Erie County.

Hearing Examiner Haycraft: You mean Clorox?

The Witness: Yes.

By Mr. Tincher:

Q. Did that price reduction of the Clorox have any effect on

(Tr. p. 1576)

the test that you were attempting to conduct in Erie?

* * * * *

A. Yes, it neutralized the test.

* * * * *

Q. Let me ask you first, if I may, sir, do you have any

documents along those lines that have been subpoenaed? A. Yes.

Q. Will those be forthcoming, the documents? A. Yes.

Mr. Tincher: I think, if I may then, sir, I will at this time forego this line of examination.

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(Tr. p. 1577)

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Q. I say, I will ask you the same thing about Evansville as I asked you about Erie, whether or not there are documents involved there which have been subpoenaed? A. Yes, there are.

Q. Now, does the Purex Corporation have any advertising allowances for its liquid bleach customers? A. Yes, we have a general allowance, as do most of our principal competitors of six cents a case for advertising, merchandising promotion.

Q. Is that allowance that you have for liquid bleach only or for all your products? A. Liquid bleach only. We have other arrangements for cooperative advertising, but the normal cooperative advertising allowance requires some proof of advertising. This allowance is an allowance that does not require proof of performance.

Q. Is there any particular reason for using it other than the other type?

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(Tr. p. 1578)

* * * * *

The Witness: It is the same allowance. Our allowance is patterned after Clorox's practice in this area. We followed the allowance they granted at the time they installed it.

By Mr. Tincher:

Q. All right, sir. Now, does the Purex Corporation charge the same prices to customers in its entire sales area?

* * * * *

The Witness: Yes, it is substantially true. There may be a difference of a nickel in one or two territories, but I believe you have also asked us for prices, and those will be forthcoming.

* * * * *

Q. Does the Purex Corporation use price-reducing coupons to promote its products, including liquid bleach? A. Not generally.

Q. Is there any particular reason for not using them, sir?

Mr. Royall: Well, I object, except as applicable to liquid bleach, Your Honor.

Hearing Examiner Haycraft: Yes, your answer must

(Tr. p. 1579)

refer to liquid bleach.

By Mr. Tincher:

Q. All right, sir, you understand the limitation you are under then? A. Yes. Yes.

Now, we do not use price-reducing coupons, mailed coupons.

* * * * *

Q. All right, sir. Let me ask you, is price reducing coupons an aid in the sale of liquid bleach? A. Yes, very effectively.

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(Tr. p. 1581)

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Q. All right, sir, let me ask you, Mr. Stoneman, did the Purex Corporation use any price reducing coupons in the Erie, Pennsylvania, test market? A. Yes.

(Tr. p. 1582)

Q. Will you tell us why you used those coupons there? A. We used coupons, price-reducing coupons at Erie in order to get quick distribution and usage by the housewife of a product that we had under test.

Hearing Examiner Haycraft: You mean the shake bottle that you are talking about?

The Witness: Yes.

* * * * *

(Tr. p. 1584)

Q. Will you tell us, sir, what was the method of distributing the coupons at Erie, by that I mean how many, and how was it determined how many should be used?

Mr. Royall: You mean into the Erie area?

Mr. Tincher: Yes.

A. The coupons were mailed, they represented practically a hundred percent distribution to the residents of the area; there were 68,000 coupons mailed.

Hearing Examiner Haycraft: You mean mailed by the consumer?

The Witness: No, mailed by the Purex Corporation.

Hearing Examiner Haycraft: To whom?

The Witness: By our agent to the consumer, to the consumers residing in Erie County.

Hearing Examiner Haycraft: Where did you get the mailing list? How did you secure those, by the telephone directory?

The Witness: No, we got them from Reuben H. Donnelly. There are two companies in the United States that

contract to mail coupons, print them and mail them; Donnelly is one of them.

By Mr. Tincher:

Q. Now, in selling its products, including liquid bleach, does the Purex Corporation use free samples, and by free samples I mean samples that are distributed to the population generally,

(Tr. p. 1585)

rather than to a special or select group? A. No.

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(Tr. p. 1586)

* * * * *

Q. All right, sir. Now, in selling your products, including liquid bleach, do you give away premiums, either self-liquidating or free premiums to the housewife?

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(Tr. p. 1587)

* * * * *

A. Yes, we have done so. We have given self-liquidating premiums, not free premiums.

By Mr. Tincher:

Q. Is that something that is being done currently, sir? A. No.

Q. When was that done last? A. About a year and a half ago.

Q. Now, in selling your products, including liquid bleach, has the Purex Corporation given a small size free, or medium size free with a giant size, something of that nature, in selling those products?

* * * * *

A. Not on liquid bleach.

Alan C. Stoneman—Direct

(Tr. p. 1588)

* * * * *

Q. Now, has the Purex Corporation, in selling its products, including liquid bleach, used any contest, and by contest I mean a contest directed at consumers in sales? A. That is a variation of the question I wanted to check for you, Mr. Tincher.

* * * * *

Q. Does the Purex Corporation use any product combination offers in selling its liquid bleach, and by that I mean combining the liquid bleach with either your other products, or any other producer's products? A. No.

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(Tr. p. 1591)

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Room 229.
Federal Building,
Los Angeles, California.

April 22, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 1593)

PROCEEDINGS

* * * * *

(Tr. p. 1610)

Alan C. Stoneman

a witness for the Commission, having been previously duly sworn, resumed the stand and testified further as follows:

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(Tr. p. 1612)

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Q. Mr. Stoneman, I will hand you Commission's Exhibits for identification 438 through 442, inclusive, and I will ask you to tell us what these are and what periods of time they cover, and how they are used. A. These are printed copies of Purex Corporation, Ltd. Annual Reports containing a certified statement of Price, Waterhouse & Company, corporation auditors, the year, the corporation fiscal year is July 1st to June 30th. The reports are marked with the year; the year ending June 30, '57, of course begins July 1st, '57.

* * * * *

Mr. Tincher: All right. Sir, I would like to offer at this time Commission's Exhibits 438 through 442.

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(Tr. p. 1616)

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Hearing Examiner Haycraft: 438 is what I am referring to.

Mr. Tincher: We have extra copies available, 438.

Mr. Royall: Your Honor, what page did you say, sir?

Hearing Examiner Haycraft: 6.

7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22.

* * * * *

Mr. Royall: Your Honor, are you ruling on these, or designating the ones——

Hearing Examiner Haycraft: I am ruling that they are received into evidence, those pages.

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(Tr. p. 1618)

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(The document referred to, heretofore marked for identification Commission's Exhibit 438 was received in evidence.)

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(Tr. p. 1620)

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By Mr. Tincher:

Q. Mr. Stoneman, I will hand you Commission Exhibit 443 for identification and ask you if you can tell us what that is and who it was prepared by? A. This is a list of our net sales of liquid bleach, domestic, that is, USA, for our fiscal years ending June 30, 1952 to June 30, 1957 by years.

Q. Who prepared it? A. Showing a total. It was prepared by our accounting department.

Q. Was that under your supervision and direction in answer to this subpoena? A. Yes. The net sales figure that appears here is the same figure that is reported in our annual statement to stockholders.

Mr. Tincher: All right, sir. I offer Commission Exhibit 443.

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(Tr. p. 1622)

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(The document referred to, heretofore marked for identification Commission's Exhibit 443, was received in evidence.)

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(Tr. p. 1623)

Mr. Tincher: Mr. Reporter, will you please mark as Commission Exhibit 444 for identification a one-page document entitled Purex Corporation, Ltd. Advertising and

Promotional Expenses on U.S. Liquid Bleach in the period 1953 to 1957?

* * * * *

Q. Mr. Stoneman, can you tell us who prepared that and at whose direction? A. Yes. This data was prepared by our accounting department at my direction, and it lists for the fiscal year ending June 30, 1953 to June 30, 1957, by years, the expenses for the monies which Purex spent for special promotional allowances on liquid bleach in the United States, the monies spent for agency advertising on liquid bleach in the United States, the monies spent for cooperative merchandising allowances on liquid bleach in the United States, the monies spent for

(Tr. p. 1624)

couponing on liquid bleach in the United States, and the monies spent for other promotions, all by years.

* * * * *

Mr. Tincher: Mr. Examiner, I offer Commission's Exhibit 444.

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(Tr. p. 1625)

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(The document referred to, heretofore marked for identification Commission's Exhibit 444, was received in evidence, in camera.)

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(Tr. p. 1628)

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Q. Mr. Stoneman, I will hand you Commission Exhibit 447 for identification, and I will ask you to tell us first if it was prepared in answer to the subpoena duces tecum served on you? A. Yes.

(Tr. p. 1629)

Q. Now, will you tell us as briefly as possible who prepared that document and how it was prepared and the sources from which it was prepared without, of course, the—divulging any of the figures or categories thereon? A. This is a tabulation of the top seven national advertisers in network, T.V., Sunday magazines, spot television, general magazines and the total expenditure, the total expenditures by these companies in advertising, showing the top seven and also Purex Corporation.

The data is taken from publishers information bureau which organization classifies—tabulates and classifies the advertising of all of the leading advertisers in the United States.

Q. Now, let me ask you, sir, if in the normal course and routine of your business, your corporation utilizes or subscribes to the Publishers Information Bureau? A. We do not subscribe to it, but the service is available through us—to us through our advertising agencies.

Q. Do you use it? A. Yes.

Q. For what purpose, sir? A. We use it to keep informed on the advertising activity of competitors and others.

* * * * *

(Tr. p. 1643)

Mr. Tincher: Mr. Reporter, will you please mark as Commission's Exhibit 450 for identification a one-page chart, a very large piece of paper entitled, "Erie, Pennsylvania Liquid Bleach Audit (New Purex Formula)."

There is a number at the top which I will scratch out. I am not offering it. It has no significance, so far as I am concerned.

This document is a print of some kind, and a typewritten document.

(The paper referred to was marked Commission's Exhibit No. 450 for identification.)

By Mr. Tincher:

Q. Mr. Stoneman, I will hand you Commission's Exhibit 450, and I will ask you to tell us as briefly as you can, and without revealing any figures thereon, what this document is, why it was prepared, and what it reflects, as far as your company is concerned? A. This document represents a compilation of data covering market shares of three principal brands of sodium hypochlorite and others as a separate category, in the Erie, Pennsylvania market, determined from an audit of 25 stores selected at random in that market. The market shares that these brands, the brands specified in these 25 stores. We believe those shares to be representative of the market shares of the brands in the entire area.

(Tr. p. 1644)

Hearing Examiner Haycraft: You mean the Erie, Pennsylvania area?

The Witness: Yes, the Erie, Pennsylvania area.

Hearing Examiner Haycraft: Who made the study; who made the survey?

The Witness: The survey was made, was directed by us. It was made by M. A. Wallach Research, Inc. I don't have their address, but I can supply it.

(Tr. p. 1645)

By Mr. Tincher:

Q. Let me ask you, sir, if that particular concern was retained or hired by your corporation for the specific purpose of that audit? A. Yes. For the specific purpose of this audit, and others.

The exhibit also shows the advertising and sales promotion activity by calendar periods of four weeks for all brands from the period of March 1st of last year, April 1st of last year to March 3 of this year.

Hearing Examiner Haycraft: From April 3 of last year to March 1st of this year?

The Witness: April 1st of this year.

Hearing Examiner Haycraft: A year?

The Witness: Yes, sir.

Hearing Examiner Haycraft: Where did those figures come from?

The Witness: This year they have been conducted over this period of time, Your Honor.

Hearing Examiner Haycraft: The same people that did your survey 2?

The Witness: Yes, sir. This is all one survey done by M. A. Wallach Research, Inc. These stores were audited, 25 stores in the Erie, Pennsylvania market, were audited each four weeks to determine what the store had purchased, first the inventory of course, and then in each audit what the store

(Tr. p. 1646)

had purchased, and the remaining inventory, and from that a determination was made of what customers had purchased at this retail outlet.

That was done by brands so that——

Hearing Examiner Haycraft: Where were the advertising figures? You said something about advertising.

The Witness: The advertising figures were obtained from local sources, the newspapers, the television station, the radio station.

The competitive activity was obtained from the reports of the researchers who not only inventoried the store and audited the purchases, but who also audited any special

displays, any special deals that were being offered in the stores at the time of the audit.

Hearing Examiner Haycraft: That would include yourself and——

The Witness: That would include us as well.

Hearing Examiner Haycraft: As well as Clorox.

The Witness: As well as Clorox. This audit, this audit covered Purex, Clorox, 101, and all other bleaches in that market in Erie, in the Erie, Pennsylvania market.

By Mr. Tincher:

Q. Now, let me ask you, Mr. Stoneman, this document in the form that it is now in, the way it is, was that prepared for the subpoena duces tecum served upon you specifically, or was

(Tr. p. 1647)

it a document you already had and you were using in your business? A. This data was all in our possession. It was simply compiled in this form for convenient use. We use it in similar form in our operations.

Q. What is the purpose of that, sir? When do you use it?

* * * * *

The Witness: Well, Erie, Pennsylvania, was a test market in which we were testing.

* * * * *

The Witness: Erie, Pennsylvania, was a test market which Purex was testing the saleability under competitive

(Tr. p. 1648)

conditions of a new package and a new product. The package happened to have a new label on it. This test market operation is relatively expensive and, hence, it is carefully audited to determine the results that are achieved

in the test market to measure the effectiveness of the product, the package and the label.

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(Tr. p. 1665)

* * * * *

Mr. Tincher: Mr. Reporter, would you please mark Commission's Exhibits 454, for identification, A, B, and C, a three-page form letter stapled, dated October 12, 1957, and entitled, "Bleach Goes Modern," addressed to all sales managers, supervisors, and salesmen.

Hearing Examiner Haycraft: Purex?

Mr. Tincher: Right, sir. And signed on page 3, or space for signature of Alex C. Bruce.

(The document referred to was marked Commission's Exhibits 454-A, B and C for identification.)

* * * * *

(Tr. p. 1668)

Hearing Examiner Haycraft:

* * * * *

Commission's Exhibits 454, A, B and C, Commission's Exhibits 455, A through N, inclusive, are received in evidence.

* * * * *

(Tr. p. 1673)

* * * * *

Q. All right. Now, will you answer the question, just giving us, not dollars, but the percent of sales costwise accounted for by freight, and the same with reference to the percent of sales cost accounted for by glass? A. The percent of sales cost accounted for by freight is 14.33 percent, and the percent of sales cost accounted for by glass is 38.74 percent.

* * * * *

(Tr. p. 1678)

* * * * * *

Q. Mr. Stoneman, I will hand you Commission's Exhibit 458 for identification, and ask you if you can tell us what that is, and who prepared it? A. Exhibit 458 is a schedule of Purex national list prices on liquid bleach by sizes covering the entire period, and showing all the changes that occurred in the period of 1/15/56 to 3/9/58. The only exception——

Hearing Examiner Haycraft: Are those published prices, or net prices?

The Witness: These are list prices, published prices. The only exception to these prices, Your Honor, might be a few instances like Erie, Pennsylvania, or Evansville, Indiana, where we sold a small quantity of merchandise at a higher than list price.

* * * * *

Hearing Examiner Haycraft: Commission's Exhibit 458 for identification is received in evidence.

* * * * *

(Tr. p. 1684)

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Q. Now, Mr. Stoneman, will you tell us, and as briefly as possible, how your company competes in the detergent field, and in the soap field, and in the cleanser field, with Procter & Gamble, and other manufacturers of those products?

Now, you may want to take those one classification at a time as I have indicated, or, in any other manner that would be appropriate.

* * * * *

A. Your question was how we compete in the detergent field, in the soap field, and in the cleanser field?

By Mr. Tincher:

Q. Yes, sir, with Procter & Gamble, and other manufacturers

(Tr. p. 1685)

in those fields? A. In the detergent field, Purex follows a different policy of selling than Procter & Gamble follows. We sell packages that are pre-marked with a suggested retail price, and both of our detergent products, Trend, liquid and dry, and also New. We attempt to give the customer an attractive buy, and the retailer an attractive margin.

* * * * *

A. We take a lower gross profit on the transaction, and we depend upon the attractiveness of the retailer's margin in detergents to gain shelf space, and the attractiveness of the price to move the product off the shelf.

We have a very low advertising or promotion budget in these products.

(Tr. p. 1686)

In some instances we spend no money at all on promotions. In the case of toilet soaps, I am speaking now of bar soaps, our only important brand in the field is Sweetheart. This product is sold largely on a deal basis, on a bargain basis. That has been its history for some 10 or 15 years.

Hearing Examiner Haycraft: What do you mean by deal?

The Witness: By deal I mean a one-cent sale, which is three bars at the regular price with one bar at one cent, or half-price sale, which may be two bars at the regular price with one bar at half price. A very high percentage of Purex's sales in a bar soap, this is well known in the trade, are in the deal category, and Sweetheart also is a

brand that does not support or cannot support high advertising and promotion allowances.

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(Tr. p. 1687)

* * * * *

By Mr. Tincher:

Q. In conducting your policy of detergents and soaps as you have expressed, what is the relationship between the prices you charge for your detergents and soaps, and the prices the other soap and detergent producers charge for their products, if there is any relationship?

Mr. Royall: Object.

Hearing Examiner Haycraft: If he knows.

By Mr. Tincher:

Q. If you know? A. Well, our list prices are substantially lower than competitive list prices in the case of detergents at all times.

(Tr. p. 1688)

In the case of Sweetheart soap, our list prices are substantially lower by 17 to 25 per cent, during the period when those products are sold on a consumer deal.

* * * * *

(Tr. p. 1689)

* * * * *

Q. Now, sir, can you tell us if you know whether or not this price differential between the Purex detergent and soap products, and the prices of the other competitors in those products, if that differential is carried over in the retail grocery stores in the prices to the consumers?

* * * * *

The Witness: A substantial portion of it is carried over.

I might explain, in the detergent field, the retailer, the retailer normally takes a longer margin on our detergent products than he does on competitive products; hence, even though he buys them at a lower list price, he wouldn't pass the entire difference from the list on to the consumer. He must preserve some of it in order to rebuild his retail margin.

By Mr. Tincher:

Q. Will you tell us the business reasons of the Purex Corporation, Ltd. for adopting this sales policy in the detergent and in the soap fields?

* * * * *

(Tr. p. 1690)

The Witness: In the detergent field the fundamental reason for adopting the policy is that this is a method for competing with major producers. It is the only method we know of which, under which we can successfully compete with the major producer; the long retail margin insures shelf space, the low price to the consumer insures movement. He must have both those things to stay in business.

* * * * *

By Mr. Tincher:

Q. All right, sir. Now, let me ask you if as a detergent and a soap producer, if you are familiar with the promotional techniques and advertising techniques used in the soap and detergent business, and by that I have reference to such things as free samples to consumers, contests to consumers, coupons, product combination offers, all that sort of thing? A. Yes.

* * * * *

Q. Let me ask you if in your experience as a liquid

bleach producers that sort of activity has been carried on in the liquid bleach business?

* * * * *

(Tr. p. 1691)

* * * * *

The Witness: The bleach business is somewhat different than the soap and synthetic detergent business with respect to promotion techniques used. Free samples or coupons are

(Tr. p. 1692)

rarely used in the bleach business. I have no knowledge of any broad use of free samples or coupons in the bleach business.

By Mr. Tincher:

Q. And, from the viewpoint—— A. For the last five years.

Q. From the viewpoint of Purex Corporation, sir, is there any reason for that? A. From our viewpoint, our budget for promotion would not stand the expenses that are coincident with couponing and sampling. I know of no——

Mr. Royall: What question is he now answering?

Hearing Examiner Haycraft: He is still answering that question, but he is taking these respective promotional schemes.

Go ahead.

The Witness: Contests are used in the bleach business, and premiums. We have used them ourselves, but these are relatively inexpensive promotion devices. You may be able to run a national contest at the cost of $25,000 to $50,000, as an illustration. Premiums usually are self-liquidating. So they do not represent high promotional costs.

The advertising cost in the bleach business has been generally lower than in the soap and detergent business with respect to the percent of net sales that are spent in advertising.

(Tr. p. 1693)

* * * * *

Promotion devices normally used in the bleach business are promotion devices at the retail level, localized display allowances. I think that answers it.

By Mr. Tincher:

Q. Is that as contrasted to offers to the consumer public over wide geographical areas? A. No, offers to the consumer in terms of cents off the label over a wide geographical area are not used, they are too expensive to be used. The economics of the bleach business wouldn't allow most manufacturers to use them, or any manufacturer to use them generally.

* * * * *

(Tr. p. 1695)

* * * * *

Q. Mr. Stoneman, you just testified for us about the different types of promotions used in the detergent, soap, and liquid bleach industries, and you have testified that some promotions are used in all three of those branches.

Now, my question is, from your experience in those three industries, can you tell us if there is any difference between the frequency of use of those promotions in the soap and detergent industries compared to the liquid bleach industry? A. Yes.

* * * * *

(Tr. p. 1696)

* * * * *

The Witness: Yes, there is a higher frequency of use of promotion devices in package soaps, detergents, and toilet soaps than there is in the bleach industry.

* * * * *

By Mr. Tincher:

Q. Now, Mr. Stoneman, I would like to ask you a question of how you compete with Procter & Gamble, and other producers of powdered cleansers in the scouring cleanser industry?

* * * * *

The Witness: The scouring cleanser business is somewhat different than the detergent business, or the soap business, in that the unit of sale at the retail level is relatively small, on the order of 12, 13, 14 cents a unit. This type of a consumer item does not lend itself to an attractive consumer deal because the difference between any deal that you can offer the consumer, or any purchase that you can offer the consumer and the price at which he can buy a unit at regular price is relatively small, hence a consumer promotion on price only, unless it is a deep cut, which can't be sustained over a long period of time, is impractical. So, we cannot use the same techniques in competing that we use in

(Tr. p. 1697)

the detergent business in the cleanser business. We must compete in the cleanser business on a regular basis. We must compete, using the same methods that our competitors use, namely, attempt to match them with advertising with promotions, and with all the other devices that are used to promote the sale of a product.

(Tr. p. 1698)

* * * * *

By Mr. Tincher:

Q. On that particular point that you were just talking about, is there any relationship between the powdered cleanser industry and the liquid bleach industry?

* * * * * *

A. I don't understand what you mean by "relationship" as you are using it in this term.

Hearing Examiner Haycraft: I think what he means, whether it is more like bleach than it is like a detergent.

The Witness: Well, the two fields are fairly closely allied; they are in the same general competitive area.

* * * * * *

By Mr. Tincher:

(Tr. p. 1699)

Q. Well, I had reference to your previous answer where you testified how you competed in the powdered cleanser industry, what you had to do to compete in that industry. My question was, if there is a relationship between what you have to do in that industry and what you do in the liquid bleach industry? A. No.

* * * * * *

A. (continuing) The competitive pressures in the cleanser industry are much higher; they are a much higher level than they are in the bleach industry, and more funds must be allocated to promotion, more promotion devices have to be used, and more advertising must be expended in relationship to the dollar of sale.

* * * * * *

By Mr. Tincher:

Q. When did your company enter the powdered cleanser industry?

(Tr. p. 1700)

* * * * *

A. In May of 1955, Purex Corporation entered the cleanser industry by purchasing Old Dutch Cleanser, which was a spin-off from the Cudahy Packing Company.

* * * * *

Q. Do you know how long Old Dutch Cleanser had been selling in the retail markets of America?

* * * * *

A. About fifty years.

* * * * *

Q. Do you know the market share that Old Dutch Cleanser enjoyed at the time it was acquired by your company?

* * * * *

A. Yes.

(Tr. p. 1701)

* * * * *

Q. What was that, sir?

* * * * *

A. About 4½ percent.

* * * * *

Q. Now, subsequent to that period of time, did the Purex Corporation make any effort to increase the sale or distribution, or both, of Old Dutch Cleanser?

* * * * *

A. Yes.

* * * * *

Q. Were you successful in that effort?

* * * * *

A. Yes, we increased the market share of Old Dutch

Cleanser over a period of about a little more than a year from 4½ percent to 12, 13 percent.

* * * * *

(Tr. p. 1702)

Q. How did you do that, sir?

* * * * *

A. We did that through advertising, and through consumer deals, and other promotion devices.

* * * * *

Q. Now, you say that occurred within a year?

* * * * *

A. No, it is a longer period, longer period than that. It is from May of '55 to the fall of—it was about 18 months.

* * * * *

Q. Now, does the product, Old Dutch Cleanser, still occupy that share of the market? A. No, it doesn't.

* * * * *

(Tr. p. 1703)

* * * * *

Q. What share of the market does it occupy at the present time, sir?

* * * * *

A. About 6 percent.

* * * * *

Q. Can you tell us the reasons you attribute to that decrease in market share?

* * * * *

A. The reduction in market share of Old Dutch is due principally to the entry of a new product in the field, and the high level of promotion on advertising that has been directed at the whole cleanser field.

* * * * *

Q. What is that new product, sir?

* * * * *

A. The new product is Comet.

(Tr. p. 1704)

* * * * *

Q. Do you know the market share and the market range at the present time of the product, Comet?

* * * * *

A. The basis of our last MRCA report, it is in first position, with 36 percent plus, on the market.

* * * * *

(Tr. p. 1729)

* * * * *

By Mr. Tincher:

Q. Do you have knowledge of whether or not the product Comet was the first powdered cleanser to have a bleaching agent in it?

* * * * *

A. Yes.

* * * * *

(Tr. p. 1730)

* * * * *

Q. What is your knowledge, sir?

* * * * *

A. To the best of my knowledge, Dutch Cleanser was the first product that had a bleach in it.

* * * * *

Q. Now, Mr. Stoneman, since the introduction of Comet, have you as an official of your company studied the promotion and

(Tr. p. 1731)

advertising which has been utilized in selling that product?

* * * * *

A. Yes.

* * * * * *

Q. And has your company, the Purex Company, been able to compete with the product as it has been promoted and advertised?

* * * * * *

A. No.

* * * * * *

Q. Will you tell us, please, the factors involved which have made it so that you cannot compete?

* * * * * *

A. The promotion weight put behind Comet of free sample, coupons, advertising, and consumer deals, was so heavy that our own budget was relatively ineffective by comparison.

The promotion costs of all the Comet promotions combined was in the order of $7 million per year. Our own budget in this area was about $1 million, and there is no effective

(Tr. p. 1732)

method of competing against this type of a combination, advertising, sampling, couponing, promotioning, operationing, unless you match it, the one who is promoting, with dollars, in the same areas; and we were unable to do that, and hence, we were unable to compete.

* * * * * *

Q. Now, is there any marketing reason, or is there any reason of any nature why such a program of promotion and advertising as was utilized with Comet would not be used with the product Clorox?

* * * * * *

A. None.

* * * * * *

(Tr. p. 1747)

* * * * *

Room 229,
Federal Building,
Los Angeles, California.

April 23, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 1749)

PROCEEDINGS

* * * * *

(Tr. p. 1754)

Nathan Smooke

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you state your full name?

The Witness: Nathan Smooke.

* * * * *

DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Smooke, what is your occupation, sir? A. President of Lady's Choice Foods.

Q. What business is Lady's Choice Foods engaged in, sir? A. Manufacturer and distributor of sundry food products, bleaches, et cetera.

Q. Would you explain to us briefly what the "et cetera" is? A. Bluing, ammonia, and a small volume of sundry items.

Q. How long have you been with the Lady's Choice Foods? A. Since 1925.

Q. How long has Lady's Choice Foods existed as a producer

(Tr. p. 1755)

of these various products? A. Since 1925.

Q. What are your duties as president of Lady's Choice Foods, sir? A. Well, to look after the overall welfare of the company.

Q. Had you finished, sir? Don't let me interrupt you. A. Yes.

Q. Is Lady's Choice Foods a corporation? A. Yes, it is.

Q. Is it a public corporation or a family type? A. It is a closely-held corporation of just a small number of stockholders.

Q. How long has your company produced a liquid bleach product, sir? A. Since 1925.

Q. What brand name is your bleach sold under? A. Our main seller is Sanicolor. Then we have the other brand name, which is Hypro. Then we have various labels that we pack for private concerns.

Q. Now, is the liquid bleach that you produce all household? By that, I mean bleaches sold in grocery stores for housewives. A. Yes. We have another bleach which is called Purewhite, that is 16 percent, that is sold to industrial concerns; swimming pool companies.

(Tr. p. 1756)

Q. All right, sir. What solution is your Saniclor and household bleaches? A. 5¼.

* * * * *

Q. Is it a sodium hypochlorite type of bleach? A. Yes.

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IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 15,769

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Q. Where is it produced, sir? A. In San Francisco and in Los Angeles.

Q. Where is it sold? A. Throughout the state of California, and portions of Arizona and Nevada.

Q. Are all your company's products sold in the same area? A. Yes, with the exception of food products; we have some support business, but we do not have any support business on bleach.

Q. Now, do you sell your products to direct salesmen, or do you use a broker or distributor setup? A. All of our sales in California and Arizona are through our direct salesmen. We have a Cal-Zona Company in Arizona, and we have these brokers, for example, in the Hawaiian Islands for our other products.

Q. What factors determine the sales area in which you sell your liquid bleach, sir?

(Tr. p. 1757)

A. Of course, transportation is the major factor.

* * * * *

Q. Mr. Smooke, let me ask you, sir: Is your appearance here today in response to a subpoena duces tecum? A. Yes.

Q. Did that subpoena duces tecum call for price lists used by your company during 1956 and '57? A. I have it in my folder, if I could refer to it.

The 24-pints, $2.10 per case; quarts, 12 quarts per case, $1.41; six half-gallons, $1.35; four one-gallons, $1.40.

Q. Are those your current list prices, sir? A. This is the information I have prepared for me by my office. I believe it to be correct.

Q. Now, do you know if your company grants any advertising

(Tr. p. 1758)

allowance or case allowance discounts from those figures which you have given us? A. At the present time, I don't; at least, in Los Angeles, we do not have any special allowances at this time, and I would have to refer to San Francisco at this time to see if they have a promotion at this time. I don't know whether they do or not.

* * * * *

Q. Mr. Smooke, in your years of producing and selling liquid bleach since 1925, have you had occasion to become familiar with or to study the competitive problems, factors involved in the sale of household liquid bleach? A. Yes, I have.

Q. What has been the basis of your knowledge or familiarity, sir? A. The actual contact with competition in the field and

(Tr. p. 1759)

with the problems connected with the bleach business.

Q. Will you tell us what are the competitive factors which determine the success or the failure of your company in selling household liquid bleach?

* * * * *

A. It is quality, price, service, advertising; all those factors enter into problems in meeting competition.

By Mr. Tincher:

Q. All right, sir; would you tell us what you mean by the factor, service? A. Service in contacting the retail store, obtaining his order, having the order delivered and shipped, and properly displayed in the store.

Q. Will you tell us, sir, what factors your company considers in setting the price, the charges for household liquid bleach?

* * * * *

A. It depends on the prices that we have to meet in order

(Tr. p. 1760)

to sell our products. These prices are set by what we call our major competition, and we have to be in line with competition, or we don't sell our product.

By Mr. Tincher:

Q. What products do you mean by "competition," sir? A. I would say—do you want specific brand names, is that it?

Q. Yes, in your sales area. A. I see. Well, of course, there are Clorox, Purex, chain stores who pack their own bleaches, and companies that pack private label bleaches.

Q. All right, sir; when you said that you have to be in line with those prices, can you give us a more definite idea of what you mean by that term? A. Since our product is not a highly advertised product, our price has to be, our product has to be sold in a price range that would attract the user to pick our product up off the shelf.

Hearing Examiner Haycraft: By that, you mean it has to be lower than the leading brand?

The Witness: It would be, in order to have some movement off the shelf, yes.

By Mr. Tincher:

Q. You have personal knowledge, sir, generally speaking, of course, of how much lower than the leading brands your liquid

(Tr. p. 1761)

bleach sells for in the grocery stores?

* * * * * *

A. It would sell from two to three cents per bottle under the nationally advertised brands.

* * * * * *

Q. Mr. Smooke, does your company manufacture the liquid bleach completely, or does it convert or cut a stronger solution down to the liquid bleach that you sell? A. We make the actual product that we pack; when we sell a 5¼, we make 5¼. When we sell the 16 percent, we make the 16.

Q. Do you have any knowledge as to the sodium hypochlorite solution of other brands of bleaches sold in the sales area that you sell your bleach in? A. Only that the label reads the same as ours does, and we have the same strength product in our packages.

Q. In selling your household liquid bleach, does your company encounter any difficulty in obtaining grocery store shelf space, sir? A. That's a difficult problem at all times.

Q. What approach do you use, or how do you go about obtaining grocery store shelf space? A. By the personal contact our salesman has with the store

(Tr. p. 1762)

that he is calling upon.

Q. All right, sir, and what methods, or what tools does your salesman use per company policy in calling on grocery store people in an attempt to get this grocery store?

* * * * *

A. I am trying to show our product would make him the better net or a higher gross on his cost against the selling price, by him knowing that particular groceryman better than the other salesmen, by using his personal influence over the groceryman himself, or during the promotions when we have deals and specials where he can induce grocerymen to give him a better break on the shelf or on stacks in the stores.

By Mr. Tincher:

Q. What type of promotions do you have reference to?

A. Oh, either buy so many cases and get so many free, or so much per case off if they buy a certain number of cases of bleach products.

Q. Are these, then, promotions aimed at the grocer himself, rather than at the consuming public? A. The promotions are aimed either, No. 1, to meet compe-

(Tr. p. 1763)

tition if there is already a deal in effect or, No. 2, if we think it is time for our company to put on a deal, of course, everything is aimed to the ultimate consumer, so that we get her to pick up the product.

Hearing Examiner Haycraft: I think what he is driving at there is, whether those tools that you have described refer to the profit that the dealer might make on your products. Does that contemplate that he would reduce the price further?

The Witness: Yes, he would. He would take the deal and saving, and pass that along to the consumer. However, in some cases he might buy in advance and store some product in his back room and make a little extra profit on that at a later time.

By Mr. Tincher:

Q. Can you tell us, sir, the number of bleach producers selling in the same sales area that you sell in and, that is, of course, to your knowledge? A. Well, there are Clorox, Purex, Jefferson Manufacturing Company, and ourselves. That is in the 5¼ percent.

* * * * *

Q. Let me ask you, first, do you consider your household bleach, the 5¼, as being competitive with the industrial 16 percent?

A. No, they have no relationship to one another.

(Tr. p. 1764)

Q. All right, sir, I do not want the others, then.

Can you tell us, sir, what percentage of your household bleach is sold in grocery stores, as distinguished from drug stores, variety stores, or any other kind of stores? A. We do not have any distribution in drug stores or variety stores. It is all in grocery stores.

Q. Is any one of the liquid bleach producers a principal or a stronger competitor than the other in your sales area? A. No, I classify them all on an equal basis.

* * * * *

(Tr. p. 1765)

* * * * *

Q. How do you determine, or are you able to determine the market share that your product enjoys in your sales are, liquid bleach, of course? A. We receive the market analysis made by the L. A. Times here, and various newspaper throughout the state, that have a service that breaks down the proportion of the market that each brand enjoys.

Q. And how does that,—is that a public document published by the L. A. Times or is that something you subscribe to? A. We're on their mailing list but I believe anybody can obtain that for information if they so desire.

(Tr. p. 1766)

* * * * *

Q. Is there any special or unique quality about your household liquid bleach which aids it in sales over competitors' brands? A. No.

Q. Is there any competitors' brand in your sales area which has any unique or special quality which aids it competitively? A. I don't think so.

Q. Does your company produce any soap or detergents? A. No, they do not.

Q. Or powdered cleanser? A. No.

* * * * *

Q. Do you do any advertising of your household liquid bleach, sir? A. Yes, we do.

Q. Is the advertising of your household liquid bleach only or

(Tr. p. 1767)

of your products is general? A. We advertise it more or less in a family way of advertising where we, for example, on our radio broadcasts will mention Sanickor or our Lady's Choice products and Challenge Oil and so forth. We have a number of brand names and we don't point towards any one where we just try to get the names of our products before the consuming public.

Q. Is that a quarter-hour radio program, sir, as distinguished from spots on radio? A. No, all we've ever had has been spots.

Excuse me, we've had a newscast at noon up North at one time which I guess you would consider to be a program.

Q. Have you used the TV in advertising your products? A. We had, at one time.

Q. How long ago was that, sir? A. I would say about two years ago.

Q. From the view of your company, sir, which is the most effective media for selling liquid bleach and your products?

* * * * *

Q. Radio or television? A. I don't have an answer to that question. That's an argument we've had in our firm for years.

* * * * *

(Tr. p. 1768)

* * * * *

Q. Can you tell us, though, sir, why you are not using TV at the present time? A. It's far too expensive for our firm to use.

Q. Do you use any other media of advertising, do you use magazines? A. No, we do not.

Q. And the same for daily newspapers? A. That's right. No magazines or newspapers.

Q. Is there any reason in particular for not using those, sir? A. In the high cost of advertising.

Q. Does your company, in selling household liquid bleach, have any special seasonal promotion of the bleach at any particular time of the year? A. No particular regularity on our deals of specials, no.

Q. Do you have and you, of course, I mean your company, sir, does your company have any direct contact with the housewife, and by that I mean, do you go out and survey housewives to find out what she is using or what she likes, anything of that nature? A. No, we don't.

Q. I believe you mentioned a while ago, sir, private labels

(Tr. p. 1769)

sold by some groceries, chains. Can you tell us with reference to the price your Saniclor, for example, sells in grocery stores, the price generally speaking that these private labels in chain stores sell for? A. Our Saniclor will sell for at least one cent per bottle higher than the private label bleaches.

* * * * * *

Q. Is your company affiliated with, sir, or a subsidiary of any other corporations? A. No, it is not.

Q. I am sorry, that is one of your, or one of my double-barreled questions. Is the answer to both parts of the question, "No, sir?" A. We're not a subsidiary of, nor affiliated with any other company.

Alan C. Stoneman—Direct

Q. I believe you mentioned that you produce some private labels for grocery chains, is that correct, sir? A. Yes, we do.

Q. Is the private label bleach that you produce the same 5.25 sodium hypochlorite solution as your Saniclor bleach? A. It's the exact same product.

Q. Has your company considered expanding its sales territory

(Tr. p. 1770)

for liquid bleach in recent years? A. No, we haven't.

Q. Is your company producing liquid bleach at full capacity? A. No, we're not.

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(Tr. p. 1774)

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Room 229,
Federal Building,
Los Angeles, California.
April 24, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 1776)

PROCEEDINGS

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Alan C. Stoneman

resumed the stand and testified further as follows:

DIRECT EXAMINATION (continued)

By Mr. Tincher:

Q. Mr. Stoneman, is the Purex Corporation, Ltd. a national advertiser? A. Yes.

Q. What media does your company use in its advertising? A. Our principal media for the last two years has been network television, NBC and CBS. That advertising has been supplemented by some TV spots and radio spots, and also by national magazine advertising, color and black and white, and a small amount of newspaper.

Q. All right, sir. Now, do the networks for television that you have mentioned grant discounts for volume or continuity of advertising? A. Yes, they do.

Q. Are you familiar with this discount structure? A. I am familiar with NBC's and CBS's discount structure.

Q. Would you explain to us as briefly as possible, sir,

(Tr. p. 1777)

what this discount structure is, and how it operates to the advertiser?

* * * * * *

A. Well, very simply stated, the maximum discount that an advertiser can earn on NBC is 25 percent for nighttime, and 30 percent for daytime network television. NBC, up until two weeks ago, had also a 25 percent daytime discount, but they have just increased it.

The discount on CBS is 25 percent, whether it be daytime or nighttime television.

By Mr. Tincher:

Q. What is this discount based on, sir? A. The discount is based on the time purchased, the amount of time and its continuity.

Q. Now, when a manufacturer purchases advertising time on television networks, is it possible for him to lump together all his products in attempting to achieve the discount rates? A. Yes.

Q. Does the Purex Corporation do that, sir? A. Yes.

Q. What expenditure is required on the National Broadcasting

(Tr. p. 1778)

Company network to earn the maximum discount on time?
A. There are four different rates for network time; there is an A, B, C, and D rate, depending upon the time of the day or evening that the show is run.

Taking as an illustration the nighttime rate, NBC require an expenditure of about $3 million to earn the maximum discount.

Q. What year would that be, sir? A. The present one.

Q. At the present time. At the current time, or in 1957, —if it makes a difference, I don't know—what amount did the Purex Corporation spend in advertising by that network?

* * * * *

A. We spent about a million four on NBC.

By Mr. Tincher:

Q. That would be $1,400,000? A. Yes.

Q. What discount did that entitle your corporation to?
A. We earned a discount of six percent.

I might explain, Mr. Tincher, that any figures I give you on our expenditures will be for time and program, both; whereas, the discounts are applicable to time buys only.

Q. I see. And can you tell us approximately, sir, what percentage of your total cost is constituted by the cost for program, as distinguished from time?

(Tr. p. 1779)

A. Well, on our most recent program, the Perry Mason Show, it was about fifty-fifty; fifty percent time and fifty percent program.

Q. Is any discount earned by the program? A. No.

Q. Do you know what expenditure is required on CBS, Columbia Broadcasting System, on the television to earn the maximum discount on time? A. It is approximately the same as it is on NBC for the same class of time.

Q. How much did your company spend in the last fiscal year, or calendar year, whichever is applicable, on this network? A. We spent about $2,400,000.

Q. What rate of discount was that; was that including programming, also? A. Yes.

Q. Give us the breakdown between programming and time for your company; approximately the same? A. About fifty-fifty.

Q. What rate of discount on time did you earn from that expenditure? A. We earned 15 percent.

Q. Now, sir, are you familiar with discount structures, if any, in magazines? And, by that, I mean nationally circulated magazines.

(Tr. p. 1780)

A. I am familiar with the discount structure in the magazines that we use; at least, with the important magazines that we use.

Q. All right, sir. Let me ask you if you can tell us what those magazines are? A. Well, the most important magazines we have used recently are Life, Ladies Home Journal, and Better Homes and Gardens.

Q. Would you tell us the maximum discount which an advertiser can obtain on those magazines? A. In Life, it is 17 percent; in Ladies Home Journal, it is 12 percent; and, Better Homes and Gardens; it is 12 percent.

(Tr. p. 1781)

Q. Can you tell the amount of expenditure required in order for the advertiser to qualify for those maximum dis-

counts? A. In Life it is about $2,000,000, I think it is $2,100,000. In Ladies Home Journal—in Better Homes and Gardens it is about a million dollars, and Ladies Home Journal about $600,000.

Q. Now, in advertising in these magazines, let me ask you first, sir, if the figures you have just given us are an annual rate of expenditure? A. Yes. Well, they are for the advertising year. When you start using a national magazine, you are entitled to establish a year from the date that you first start to use the magazine. This year may not fit your corporate year, or the calendar year.

Q. When you commence paying, do you pay at the full list price? A. Yes.

Q. If at the end of the year you have advertised sufficiently so that earlier in the year prior to paying you would have been entitled to a discount, is there any adjustment made? A. I am not familiar with the detail of the billing practices, Mr. Tincher, but you would normally, if for instance we contracted in Life for three ads, we would pay the rate that would be demanded by those three ads, but if during that year three or four months later we decided to run 25 ads in Life,

(Tr. p. 1782)

we would get a retroactive discount covering the original three, if it came within the advertising year.

Q. Now, of these three magazines that you have mentioned, sir, Life, Better Homes and Gardens, and Ladies Home Journal, has your company earned the maximum, or has it earned any discount in its advertising? A. We have. Our expenditure in Life was to the order of $70,000, and we did not earn a discount. In Ladies Home Journal we have earned about 4 percent discount. In Better Homes

and Gardens we spent about $68,000, and did not earn a discount.

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(Tr. p. 1784)

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By Mr. Tincher:

Q. Now, returning to television, Mr. Stoneman, is there any difference in television advertising cost to an advertiser having several products to advertise, and an advertiser having only one product to advertise?

(Tr. p. 1785)

* * * * *

A. Yes, multi-products are an advantage in television advertising.

You might use as a simple illustration a company with one product that could afford the cost of one program, versus the company with three products that could afford the cost of three programs.

In the case of the company with three products, they could put each product on each program, if it were a 30-minute program, and thereby, for the same expenditure on that product, buy probably twice the audience that you could buy if you were limited to one program.

I say twice the audience, because I am assuming there would be a 50-percent overlap between the three programs.

* * * * *

Hearing Examiner Haycraft: Take your products, so that we can understand your experience.

The Witness: Well, we have never been able to afford over one program, your Honor, but if I had product A, and I bought television program from seven to seven-thirty, I would have three advertising opportunities in that program—the

(Tr. p. 1786)

beginning of the program, the middle of the program, and the end of the program.

So, I would be advertising my product A to that same audience three times.

But now, assume that I had product A, B, and C; I buy three programs, and I buy these contiguous, which wouldn't make too much sense, but let us assume I would do it. I buy the program from seven to seven-thirty, eight to eight-thirty—seven to seven-thirty, seven-thirty to eight, and eight to eight-thirty.

I would now have nine opportunities to advertise, but instead of putting product A in the first three spots, I would put it in the first one, I would put product B in the second, and C in the third.

I could put A in the fourth, and B in the fifth, and C in the sixth, and A in the seventh, and B in the eighth, and C in the ninth.

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(Tr. p. 1791)

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By Mr. Tincher:

Q. Now, would you tell us, Mr. Stoneman, what the relationship is in value between a 60-second television spot, and a 60-second commercial on a television program?

* * * * *

A. Well, a 60-second television spot normally is not purchased; however, it is less valuable than a 60-second television commercial identified with a program, because, in the case of a 60-second commercial tied in with the program, you get the additional value of identification with the program; whereas, in the case of a spot, you are running into station breaks, you are running into people

flipping the dial of their television set seeking another program, and a 60-second spot

(Tr. p. 1792)

is not regarded as being as valuable as a 60-second commercial tied in with a program.

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(Tr. p. 1797)

* * * * *

Q. All right, sir. Now, in purchasing a regional food index from the Nielsen Company, does the Nielsen Company have standard zones or regions that you purchase, or may you order a specific zone that you want covered from Nielsen?

* * * * *

The Witness: No.

* * * * *

The Witness: No, you must buy the zone that is available. That is the standard Nielsen zone. Nielsen

(Tr. p. 1798)

divided the country into a number of zones, a total of all zones makes up the national panel.

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(Tr. p. 1800)

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Hearing Examiner Haycraft: Have you ever grouped other products with the bleaches in a promotional scheme?

The Witness: No, not recently.

I am answering this limited to a combination offer of sale of two products at the retail level; is that correct?

Mr. Tincher: Well, not necessarily two products.

Hearing Examiner Haycraft: That is the way you understand it?

The Witness: That is what I understand.

Hearing Examiner Haycraft: Bleaches, liquid bleaches, and other products?

The Witness: That is right.

We have not offered combination sales.

By Mr. Tincher:

Q. Well, just to make sure we understand each other, sir, Mr. Stoneman, I believe the first day you were here, you were asked to obtain some information about a contest that your company had conducted.

Have you been able to obtain that information as to whether liquid bleach was included in the products advertised in that contest? A. Yes, it was.

* * * * * *

(Tr. p. 1803)

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Q. But I would like to ask this one question now, which has nothing to do directly with the record when it does come in, I don't believe. And so, Mr. Stoneman, if I may, sir, my question is, what did you mean at record 1576 when you said that the Purex test in Erie, Pennsylvania, was neutralized?

* * * * * *

The Witness: I meant that the test was cancelled out. We made the test for a particular purpose, the purpose being to accumulate users of a new product in a limited area in a short period of time, not only to accumulate a few users, but to accumulate enough users so that researchers could go into the market and make a meaningful survey, if they simply picked housewives at random, because the Purex market share did not remain at a reasonably good level for but a very short period of time, and because the first purchasers did not, very few of them repeated in their purchasing, as shown by the market share.

It is not possible to do the piece of research that we anticipated and get meaningful results.

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(Tr. p. 1810)

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By Mr. Tincher:

Q. Mr. Stoneman, would you tell us how much of Purex's Old Dutch Cleanser is sold in drug stores as compared to grocery stores?

* * * * *

A. Five percent; approximately five percent.

* * * * *

(Tr. p. 1811)

Q. Can you tell us the dollar volume of powdered cleanser business, the total market in 1956, and also in 1957?

* * * * *

A. The total market of friction cleansers, both in 1956 and 1957, this is at the manufacturer's price, not at retail prices, is approximately $55 million.

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(Tr. p. 1812)

* * * * *

Q. Mr. Stoneman, are the basic competitive problems in selling household liquid bleach any different than the basic competitive problems in selling powdered cleansers?

* * * * *

The Witness: No.

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(Tr. p. 1814)

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Q. Mr. Stoneman, my last question to you, sir, is to ask you if you are familiar with the fact that the Procter &

Gamble Company acquired the Clorox Chemical Company in August of 1957? A. Yes.

Q. Will you tell us, please, Mr. Stoneman, what effect, if any, this acquisition will have on the liquid bleach business of the Purex Corporation, Ltd.?

* * * * * * *

The Witness: The acquisition of Clorox by Procter & Gamble, in our opinion, will have a serious effect upon Purex's business, and Purex's ability to compete in the liquid bleach business, particularly if the same promotion devices which are normally used by Procter & Gamble are applied to the liquid bleach business.

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(Tr. p. 1827)

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Room 229,
Federal Building,
Los Angeles, California.
April 30, 1958.

Met, pursuant to adjournment, at 1:00 p.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 1829)

PROCEEDINGS

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(Tr. p. 1830)

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Mr. Royall: 447.

Your Honor, we agree that all figures in 447, except those for spot TV are correctly copied from CX 448, which

is a volume entitled "National Advertising Investments," Volume 9, No. 2, January-December, 1957.

We do not admit that the spot TV figures are copied

(Tr. p. 1831)

from that.

Hearing Examiner Haycraft: Do you recognize the Exhibit 448 for identification as an authoritative source for such figures?

Mr. Royall: We think that the Exhibit 448 is an authoritative source.

* * * * *

(Tr. p. 1834)

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Hearing Examiner Haycraft: It seems to me the situation there is that all Commission's Exhibit 447 except the figures with respect to TV Spot, that there is no objection, and they will be received in evidence, but as to that, it would be necessary for further testimony to be taken.

(The document referred to, heretofore marked for identification as Commission's Exhibit 447, was received in evidence.)

* * * * *

(Tr. p. 1837)

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Mr. Tincher: All right, we will take that one, Commission's 450 for identification, is the Erie, Pennsylvania tabulation.

I might state for the record, sir, that there have been certain changes in ink made on Commission's Exhibit 450, and I am informed that these changes were arrived at as a result of meetings between Mr. Hanson, representing the Purex Company, and Mr. Larsen, for Procter & Gamble.

I will show that to them, and see if that is correct.

Proceedings

(Tr. p. 1838)

Mr. Royall: I think that is a misapprehension on the part of Mr. Tincher. I understand that we did not agree to any changes on it. There were some——

Mr. Tincher: What I meant was, it was my understanding, this is just hearsay to me, that you did find some things that needed correcting.

Mr. Royall: Yes, sir, I think there were some errors in it and there were some of them that were apparently corrected, but I think your inquiry is as to the authentication of it, is that correct?

Mr. Tincher: That is as corrected, yes.

Mr. Royall: As corrected.

Would your Honor give us a second to see the changes?

* * * * *

Hearing Examiner Haycraft: I would like to have a copy of the exhibit, if you can spare me one, so I can follow you.

Mr. Royall: I will give you the new one. I will

(Tr. p. 1839)

have to look at it again. That is the one just given to me. I haven't read it.

Here is a copy of the one they covered, I should like you to see also, but for this purpose the first column across the page headed Shares of Total Liquid Bleach Market is a correct copy of the M. A. Wallach Research Corporation, some name like that.

Mr. Tincher: M. A. Wallach Research, Inc.

Mr. Royall: Research, Inc. The second column which deals with the average price per unit as headed here also was derived from that source.

The column entitled Merchandising in Stores, this is the seventh column down, from Wallach.

They were correctly copied from the Wallach with certain errors which I assume have been corrected?

* * * * *

Neither Counsel nor our client have been able to find sufficiently about Mr. Wallach to make a statement that would qualify him.

(Tr. p. 1840)

However, for this particular occasion and not to bind ourselves for the future, we make no objection to those three columns on the ground of disqualification of Mr. Wallach as an expert or experienced researcher.

Your Honor, may I look at that one a second to see if the changes, the errors on there, I want to see if they are corrected.

* * * * *

Mr. Royall: And the fourth, advertising schedule, two advertising schedules, and the one coupon, were prepared by Foote, Cohn & Belden, that is, the basic data was. There were very many mistakes in the take-off from the Foote, Cohn & Belden document, and I would have to look at it a little more carefully to say immediately that it was changed. There must be ten or fifteen or twenty. However, we do not make any point that Foote, Cohn & Belden is not qualified in this matter.

Mr. Tincher: Mr. Examiner, Mr. Royall is correct and there is one simple reason for all the amount of mistakes.

(Tr. p. 1841)

We can have the witness testify, or I can tell you, whichever you prefer.

Hearing Examiner Haycraft: You had better have the witness testify.

Mr. Tincher: All right, sir.

Mr. Royall: But we will compare those, Your Honor, and if satisfactory, we will put in the record that it has

now been corrected and if we find otherwise before tomorrow morning, we will ask Your Honor to permit us to do so so we won't hold up the trial.

Now that leaves open the situation of the sixth, I believe it is the sixth horizontal column, price per unit in stores.

The chart indicates that that was obtained by telephone call from a Purex salesman. All we know about him is his name.

We have not been furnished any figures that would enable us to check the accuracy of these figures, and comparison with the only source we have of Clorox does not indicate that we can agree to the accuracy of the figures that column has.

Mr. Tincher: May I inquire, Mr. Royall, is it merely the Clorox prices that you can't agree on, or all the prices?

Mr. Royall: The only ones we could check were the Clorox ones. We were not given any data as I am informed

(Tr. p. 1842)

enabling us to check the Purex one, though we would like to have had it.

Hearing Examiner Haycraft: Is that all that remains of the exhibit?

Mr. Royall: No, sir, there is one more.

Now, Your Honor, we were permitted to go to the Purex records on the last column or two columns, it looks like it might be denominated either Purex Factory List and Clorox Factory List, and we find they are correct.

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(Tr. p. 1845)

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Mr. Royall: Now, Your Honor, as to this copy here, this Exhibit 450, which was offered and which is now, has had certain changes made in it, we would like to request

that both of them be in the record to the extent they are admitted.

Hearing Examiner Haycraft: What do you mean, both?

Mr. Royall: Both the one they prepared first, and the one that was prepared second.

Hearing Examiner Haycraft: No, I am going to let the corrected,—I don't want to see any; I will admit the corrected exhibit.

Mr. Royall: That is right.

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(Tr. p. 1846)

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Alan C. Stoneman

having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

By Mr. Tincher:

Q. Mr. Stoneman, let me hand you Commission's Exhibit 450, which has been struck, and I just want to ask you a few questions about it.

Hearing Examiner Haycraft: Now, wait a minute. Exhibit 450 has not been struck. 451 was struck.

* * * * *

By Mr. Tincher:

(Tr. p. 1847)

Q. Let me ask you, Mr. Stoneman, in the activities which are reported under the various horizontal columns are reported so as to be in the proper time period in the vertical columns? A. Yes.

Q. Now, I wonder if you could, for example, in the second horizontal column, average price per unit sold, vari-

ous abbreviations appear there; I wonder if you would state for the record what the abbreviation is, and what it stands for? A. "Quart" is abbreviated "Qt"; the abbreviation one-half, the fraction means half-gallon; the abbreviation "G" means Gallon.

Q. And are the various figures which are reported in cents, sir? A. Yes, the figures reported in cents are the retail prices reported by Wallach.

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(Tr. p. 1848)

Q. All right, sir, and in the horizontal column entitled "Merchandising in Stores," would you please explain what the abbreviation "Dist." stands for? A. The abbreviation "Dist." in the horizontal column captioned "Merchandising in Stores" means distribution.

Q. All right. Now, Commission's Exhibit 450 that you are holding, under the horizontal column "Couponing" has various incorrect notations, will you tell us, if you can, the reason for the error in that column which has been corrected? A. Yes. The original figure of 80,000 which was struck and replaced by a figure of 68,208, was an estimated figure of the number of coupons that would be mailed in Erie. The 68,208 was the actual count of the number of coupons that were mailed according to Reuben H. Donnelley's mailing list for Erie County.

Q. Were the original computations based upon the original 80,000 estimate, or on the actual mailing? A. No, I think the original, I think the computations were taken from the invoicing and coupon redemption. The coupon cost here includes the coupon mailing as well as the coupon redemption.

Q. All right, sir. In that same horizontal column on couponing, is the redemption of coupons, the percent that

is indicated there, is that when they were returned to the Purex Corporation, Ltd., or returned to the retail grocer by the

(Tr. p. 1849)

consumer? A. This is the redemption of coupons in this column under couponing is shown in the vertical column opposite the vertical column which carries the date that we paid the retailer for the coupons; when we redeemed them, not when the housewife turned them in at the retail store.

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(Tr. p. 1851)

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Q. Well, let me direct your attention to advertising schedule—Clorox. You notice, in advertising schedule Clorox, you will notice at the end of "Total Advertising" in both ends, there are arrows indicating the time period covered. Why, I am asking you now on Purex what the beginning of the total advertising, which is given there?

* * * * *

The Witness: To summarize, the total advertising schedule for Purex began on 10/14, and ended on 3/31. That is,

(Tr. p. 1852)

10/14/57, and 3/31/58.

* * * * *

Hearing Examiner Haycraft: I would like some comments on the corrections made on your TV spot announcements there.

Mr. Tincher: Yes, I think the document speaks for itself. I don't recall exactly.

The Witness: With respect to these corrections on spot announcements, your Honor, when a program of this sort

is set up, there is normally a time lag between the estimate of what you will spend in the market and the commitment. So, the advertising agency would normally seek vacancies, or seek availabilities, and would present a budget on the basis of a budget for the test market. But if there is a time lag between the time they seek availability, and the time of approval, and they go out to place an order, they may find now that they cannot place the spot in exactly the same time period that was contemplated, and they are given considerable latitude to shift, as long as it does not change the overall picture, or the overall effect, and that is the reason for these corrections.

One was the estimate of when the spots would be

(Tr. p. 1853)

run, and the other is the actual.

Hearing Examiner Haycraft: By the other, you mean the penned corrections?

The Witness: The pen corrections are the actual.

By Mr. Tincher:

Q. Then I would ask you the same question, sir, with respect to the changes made in the newspaper advertising.

* * * * *

A. Well, this is a shift in the advertising schedule and, as I see it, if you will give me a second to add them up, there is 14, 20, 26, 30, versus 10, 20, 26; there was a reduction there of six ads from the contemplated original program. I do not know offhand what the reason for that is.

By Mr. Tincher:

Q. All right, sir, but do you know that the inked figures are the correct figures of what was actually run? A. Yes.

* * * * *

(Tr. p. 1854)

* * * * *

Q. I notice in the column entitled, "Merchandising in Stores," there has been an inked correction in the vertical column, 16-23, stating ironing board cover offer, 36 percent distribution.

I wonder if you could explain to us the reason for that correction? A. Well, this apparently was a posting from the Wallach Reports which was not made, and was picked up on the second review. This is an addition that indicates that the ironing board cover offer, this is in the Clorox column, is a premium by Clorox appeared on the market in early January, rather than in early February, as was originally reported.

Q. All right, sir; then I notice in the couponing horizontal column, there is an inked correction for the month of March on the cumulative redemption of coupons. Let me ask you if you know the reason for that correction? A. That was an error in posting.

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(Tr. p. 1861)

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Hearing Examiner Haycraft: This is the physical exhibit that I have in my hand here, you better get it stamped

(Tr. p. 1862)

up and run a penned "X-wise" through this that has not been received.

(The document above referred to, heretofore marked Commission's Exhibit 450 for identification, was received in evidence.)

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(Tr. p. 1867)

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By Mr. Tincher:

Q. And on page 1521, sir, I will refer you to line 4, and on all these I am giving you, my question is, if there is any correction, addition or explanation that needs to be given. A. The sentence which includes line 4 on page 1521 reads that: "It also manufactures Drano, which is a bowl cleaner which is distributed regionally in the West." That should read: "It also manufactures Purex drain opener and a bowl

(Tr. p. 1868)

cleaner which is distributed regionally in the West."

* * * * *

Q. All right, sir. And to page 1523, line 7, and in answer to your response, sir, my question is not just anything wrong, if there is anything that needs to be explained or added. A. Well, line 7 is incomplete in that New Orleans, Louisiana, should be added as a liquid bleach point of production.

* * * * *

(Tr. p. 1871)

Q. Mr. Stoneman, you were asked on page 1578 to check when were the last times you had used price reducing coupons to the consumer; do you have that information? A. May I refer to the page?

Q. Yes, it is page 1578, line 21. A. Yes, the two recent uses of price reducing coupons were in Erie, Pennsylvania, in 1957; San Antonio, Texas, in 1954.

Q. And, do you know how many coupons were used in the Texas area, sir? A. 250,000.

* * * * *

(Tr. p. 1878)

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By Mr. Tincher:

Q. Let me ask you, sir, you were talking the other day, you may recall, about freight cost and glass cost, and you gave certain percentages.

Let me ask you if those percentages are percentages of the selling price, or of the selling cost of the liquid bleach?

A. They are the percentages of the selling price.

Hearing Examiner Haycraft: Which ones were those? We don't want to hunt in the record.

Mr. Tincher: That, sir, was Page 1673, on two occasions, Lines 12 and——

Hearing Examiner Haycraft: What were the percentages he gave?

What were the percentages you gave, do you remember?

The Witness: They were 14 percent, approximate percentages were 14 and 40, and the accurate percentages were 38 and 14, and 14.33, I believe.

Hearing Examiner Haycraft: That is all the selling price?

The Witness: Yes.

By Mr. Tincher:

Q. All right, sir; then you testified the other day

(Tr. p. 1879)

concerning Old Dutch Cleanser having a bleaching agent in it prior to Comet.

Let me ask you if Old Dutch Cleanser was the first product of any kind to have a bleach agent, or the first scouring cleanser to have a bleaching agent?

* * * * *

A. The first scouring cleanser.

* * * * *

Alan C. Stoneman—Cross

(Tr. p. 1881)

CROSS EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 1902)

* * * * *

Q. Now, Mr. Stoneman, you gave testimony about your television network programs. I will ask you if all or part of those have not been cancelled and whether it's all or part?

(Tr. p. 1903)

A. Those programs have finished, yes.

* * * * *

Q. Are they over? A. You can buy a television—yes—you buy a television for a certain period and they have run their course.

* * * * *

Q. They have run their course, and you have substituted other forms of advertising for them, haven't you? A. That's correct.

* * * * *

Q. Mr. Stoneman, in your testimony you were asked about the new bottle, or new bottle or the new bottle handle on Purex bleach. That was a pioneer venture you worked out with the glass company, wasn't it? A. That's right.

Q. What company? A. That's Latchford Marble.

(Tr. p. 1904)

Q. In connection with the use of sampling for the sale of liquid bleach, is it not a fact that weight and breakage are factors militating against the sampling of it? A. Yes.

Q. Are you familiar with the Nancy Sasser purchase price refund promotion? A. Yes, we've used it and I believe in 1953.

Q. Since then? A. Not that I know of.

Q. That was a sampling operation, wasn't it? A. Yes, a very small one.

Q. Mr. Stoneman, did Purex recently advertise the following, "a special ingredient has been added to provide even penetration, faster cleaning action?"

* * * * *

(Tr. p. 1905)

* * * * *

A. Yes.

By Mr. Royall:

Q. Now, do you know about when this was put out? A. Yes. This is a brochure that was prepared for the Erie program, Erie introduction.

Q. Now, in that same program—and I show it to you—did not you work out a system for suggested retail price? A. Yes.

* * * * *

(Tr. p. 1909)

* * * * *

Q. Now, I believe you testified that, beginning in October, 1956, you shifted to a direct sales force in bleach; is that right? A. That's correct.

Q. I will ask you if from that date until the date of this merger, which is in question in this case——

Hearing Examiner Haycraft: August, '57.

By Mr. Royall:

(Tr. p. 1910)

Q. August 1, '57, if your market share on Nielsen didn't drop from 15.2 to 14.7?

* * * * *

A. Our market share on liquid bleach, our rate of growth, I will state that a little differently, our rate of growth on liquid bleach has been less than the rate of growth of the total bleach market over the period of the last four or five years.

However, the exact amount of any market deterioration that Purex suffered between October and August, I don't have on the tip of my tongue. I would be glad to supply it.

Mr. Royall: I want to make it clear that I was speaking of the percentage of the liquid bleach market, and does that help you any in your answer?

The Witness: No. We have a number of products, and a number of reports. I don't attempt to remember them all.

* * * * *

(Tr. p. 1917)

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Q. Did you testify before the Federal Trade Commission on October 24, 1952, at Los Angeles, California?

* * * * *

(Tr. p. 1918)

* * * * *

Hearing Examiner Haycraft:

* * * * *

Incidentally, I take official notice, of course, that that was a proceeding entirely foreign, on different grounds. I just don't see where you could possibly tie the two together.

By Mr. Royall:

Q. Mr. Stoneman, did you not in 1952, in October, 1952, testify under oath the following:

> "Question: I take it that the competition that your respondent company has had to meet is more or less on a price basis, is that correct, Mr. Stoneman?

"Answer: Yes.

"Question: Purely and simply price; quality of product is not an item?

"Answer: No. Price is the most important factor."

Mr. Tincher: I object to the question; it refers to past periods, periods prior to 1952.

Mr. Royall: No, it did not.

(Tr. p. 1919)

* * * * *

Hearing Examiner Haycraft: What direct testimony is that supposed to attack? What are you contradicting?

Mr. Royall: Well, he gave a lot of factors, Your Honor. I can point it out to you, of course.

Hearing Examiner Haycraft: I sustained the objection.

Mr. Royall: You sustain the objection?

Hearing Examiner Haycraft: Yes.

Mr. Royall: All right.

Hearing Examiner Haycraft: Not proper cross examination, too remote a period of time.

By Mr. Royall:

Q. I will ask you if you didn't also at that same period testify under oath that the most important thing to the housewife is price?

Mr. Tincher: Object, sir.

Hearing Examiner Haycraft: Sustained.

By Mr. Royall:

Q. I will ask you, sir, if you didn't testify under oath in October, 1952, speaking of Purex liquid bleach: "We compete with local brands more frequently than we compete

(Tr. p. 1920)

with Clorox"?

Mr. Tincher: I object, sir.

Proceedings

Hearing Examiner Haycraft: Sustained.

By Mr. Royall:

Q. I will ask you if you didn't testify under oath in October, 1952, that there are "300 bleach manufacturers in the United States"?

Mr. Tincher: Object, sir.

Hearing Examiner Haycraft: Sustained.

* * * * *

(Tr. p. 1923)

* * * * *

Room 229,
Federal Building,
Los Angeles, California.

Thursday, May 1, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 1926)

PROCEEDINGS

* * * * *

Mr. Royall: Yes, sir, I do, and I would like very much to ask Mr. Tincher's attention to it because this comes to me from Mr. Larsen and Mr. Watkins, and I want to be sure that we have no misunderstanding about it.

The Counsel met yesterday afternoon with the Government Counsel and Purex Attorneys and in general an understanding was reached about certain of the matters.

* * * * *

We have been advised that it is impossible to determine from the Purex records the selling cost applicable to liquid

bleach here as sold through brokers or through direct salesmen.

They also advise that records do not show allocation of cost to liquid bleach, which is part of the same thing.

We understand that Purex has attempted to make this

(Tr. p. 1927)

allocation and has found it impossible. That's what we are advised, and it is doubtful if even a complete audit would give you the facts.

* * * * *

Hearing Examiner Haycraft: It depends on whether or not you are willing to accept those statements off the record or whether you want the gentlemen who advised you that to make the statement under oath on the witness stand.

Mr. Royall: What I thought, Your Honor, is——

Hearing Examiner Haycraft: If you are satisfied and willing to stipulate that that is the case.

Mr. Royall: I am satisfied unless there is some misunderstanding with counsel for the other side. If both counsel say that, I don't want any witness. I mean, I would not seek on cross examination on that, because I don't know enough about it and I have no reason to at this time think that there is anything except a correct statement about it. We have nothing to the contrary.

As to the private label bleach sales, Mr. Evans will meet with our accountant here at 2:00 o'clock, as I understand, with a summary of those sales, and the accountant will go over them with him and will look into, among other things, the allocations and systems used.

It seems to me possible that that conference might.

(Tr. p. 1928)

solve the situation, but we don't, can't definitely know until that time.

Now, Mr. Tincher, does that differ in any way from the facts as you understand them?

Mr. Tincher: No, sir. It is basically correct.

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(Tr. p. 1930)

* * * * *

Mr. Royall: I am not trying to argue this thing, Your Honor. I'm just trying to state the facts.

Third, we asked for reports, surveys, records, all other documents and memorandum supporting testimony that a multiple product line enables a manufacturer to obtain more shelf space in retail outlets.

We were informed they do not have such records.

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(Tr. p. 1934)

* * * * *

Alan C. Stoneman

resumed the stand and testified further as follows:

CROSS EXAMINATION (cont.)

* * * * *

By Mr. Royall:

* * * * *

(Tr. p. 1935)

* * * * *

Q: I believe you testified also that the couponing for your Erie promotion was handled by Reuben Donnelly, is that correct? A. Yes.

Q. That is an independent organization? A. Yes.

Q. Its services are available to any company that they desire to deal with, is that correct? A. That's correct.

Q. Does it sometimes represent a number of companies in a joint coupon venture? A. Yes, it does.

* * * * *

(Tr. p. 1936)

* * * * *

Q. And now give me Exhibit 443.

Now, these figures of net sales appearing on Exhibit 443, are you familiar with that? A. I don't recall it exactly.

Q. Let me give it to you, because I couldn't remember exactly the form of it, myself. A. Yes.

Q. Now, that does not include any private bleach or industrial bleach, does it? A. No.

* * * * *

(Tr. p. 1937)

Q. Those figures are after the deduction of quantity and other discounts for stock protection and special promotional allowances, are they not? A. Yes.

* * * * *

Q. Do you have any schedule of quantity discounts for liquid bleach alone? A. Yes.

Q. Can you make that available to us with little difficulty? A. Yes, I can tell you. I think I can give it to you from memory.

We have a 2 percent for carload or truckload, and 1 percent for half carload or truckload. That is depending upon the territory and the regulations that govern truck shipments. The truckload varies from 900 cases to as low as 500 cases, and, hence, a half truckload or carload varies from 450 to 250.

Q. Now, Mr. Stoneman, don't answer this question until his Honor has ruled on it.

Yesterday, I asked you if you were either planning to,

(Tr. p. 1938)

or were about to, change your 6-cent allowance, and the Court excluded that testimony.

I now ask you if it wasn't changed as of today?

* * * * *

A. Is your question directed toward a specific area, or is it directed toward the national?

By Mr. Royall:

Q. Will you give me the area, sir, while you are answering the question? I don't know.

Hearing Examiner Haycraft: He started to answer yesterday, I remember, in some area. I am not going—or, I am going to let him answer, because apparently, there may be some further testimony developed by Respondent on that, and I think I would rather have the facts as to what they might be, than some conjecture as to what they are.

A. In the San Francisco territory, I am not sure of the date, but it is at least a very recent one, within the last two weeks, we withdrew the 6 cents per case promotional

(Tr. p. 1939)

allowance, and substituted a 10-cent-per case cooperative advertising allowance that had formerly been in effect up to some point in 1956, I think it was, the spring of '56.

The present allowance requires proof of advertising for payment, whereas, the previous allowance did not require such proof.

* * * * *

(Tr. p. 1940)

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By Mr. Royall:

Q. The effect of changing from the system that you have been following to the 10-cent system has a net effect

of increasing your price in the territory to which it is applicable, does it not? A. It is not necessarily true.

Mr. Tincher: I object.

Hearing Examiner Haycraft: Overruled. He may answer.

By Mr. Royall:

Q. And that would be shown by records, would it not? A. Those records might be very difficult to get. If you

(Tr. p. 1941)

have a 6-cent allowance that is paid to direct buyers, your cost is 6 cents per case on those cases that are sold to direct buyers. If you have a 10-cent allowance that is paid on proof of advertising, your cost is that percent of the cases that you sell and which you get proof of advertising.

Now, if 60 percent of the cases supplied you with proof of advertising, obviously your cost would be the same.

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(Tr. p. 1944)

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Q. Mr. Stoneman, who prepared this exhibit? A. That exhibit was prepared by our Market Research Department.

* * * * *

(Tr. p. 1945)

* * * * *

Q. Did Mr. Wallach prepare this exhibit? A. I don't know. No, he didn't prepare that exhibit. You mean did Mr. Wallach prepare the information that he sent to us? I don't know.

* * * * *

(Tr. p. 1951)

* * * * *

By Mr. Royall:

Q. You said he made reports for other places; what were they?

(Tr. p. 1952)

Mr. Tincher: Object, sir. It is beyond the scope——

Hearing Examiner Haycraft: Sustained.

By Mr. Royall:

Q. Did he make one on Evansville?

Mr. Tincher: Object, sir.

Hearing Examiner Haycraft: Sustained.

Mr. Royall: Your Honor, may I state the purpose of that?

Hearing Examiner Haycraft: Well, I don't know; it was not gone into on direct examination with this witness on Evansville. This exhibit does not purport to cover Evansville. There is no exhibit in here on Evansville.

* * * * * *

Mr. Royall: Your Honor, they asked him on Evansville on direct examination.

(Tr. p. 1953)

Hearing Examiner Haycraft: They asked him about a lot of other things, but no exhibit was presented on Evansville. That is the thing to be determined here now.

Mr. Royall: Apparently, we differ on it, but I do like to give you my point of view. I do not conceive that direct examination is a complete confine of cross examination.

Hearing Examiner Haycraft: That is my ruling, and always has been, Mr. Royall.

Mr. Royall: Yes, I understand.

Hearing Examiner Haycraft: In order to keep the record down within some reasonable size. I always give counsel for the respondent an opportunity to present their

defense in an orderly manner, the same as I do counsel in support of the complaint, but I do not let them mix it up, so far as I can. Of course, I got myself in a boat a while ago when I allowed a question I originally sustained the objection to. That is just an illustration of what I would be doing if I used more liberal rules of cross examination. The first thing you know, you would have your case in, and the Commission would not have theirs——

* * * * *

(Tr. p. 1954)

* * * * *

Q. Now, Mr. Stoneman, how many other bleach brands were sold in Erie, Pennsylvania, during this period? A. I don't know.

Q. You know that there were others, do you not? A. Yes. Our study covered 101, Clorox, Purex, and then all other brands were thrown in a single category.

Q. You do not know the names of any of those?

* * * * *

The Witness: No.

* * * * *

(Tr. p. 1971)

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By Mr. Royall:

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Q. Let's put it this way. You did start Beads O'Bleach between '52 and '57, didn't you? A. Yes.

Q. What is that product? A. That's a dry chlorine bleach.

* * * * *

(Tr. p. 1984)

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Alan C. Stoneman—Cross

Mr. Tincher: Mr. Examiner, while we are talking so much about the Purex case, will you take official notice that the complaint in that case was dismissed?

Hearing Examiner Haycraft: I, of course, can, but I don't see what relevancy that is to this case.

Let me make clear, Mr. Tincher, that the only reason that any reference is being made to that case at all, as I indicated yesterday, is that this witness, if he testified in that case to the same facts that he testified to in this case, ostensibly the same facts, purportedly the same facts, then counsel for the respondent is entitled to call his attention to those, that other testimony, if it is contradictory to the testimony he has given in this case, for the purpose of impeachment, but that is as far as he can go.

That is as far as I am going to allow any reference on that case. I want no further examination on Mr. Sharp.

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(Tr. p. 1988)

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Q. Now, Mr. Stoneman, is it not true that the price of Purex is higher than the price of Clorox, not only in the Erie situation that you testified about, but in Louisville, San Francisco, southern Oregon, and perhaps others?

Hearing Examiner Haycraft: You mean the retail price, or the wholesale?

Mr. Royall: The price at which the Purex Company sells. A. Currently, no; it is not true. The price of Purex was

(Tr. p. 1989)

a little higher in Erie and in either Louisville or Evansville; I am not sure which, for a short term during a market test.

The price of Purex was higher in the Bay area; that is, San Francisco, in certain other territories served by our San Leandro plant, for a short term, during this year.

I would have to refresh my memory to get the exact dates that was. That term did not extend over ninety days, however, and the present price in the Bay area is just the same as the price of Clorox, as well as in all territories served by the San Leandro plant, at the present time.

I think maybe the information you have is out of date as of now, as of today.

* * * * *

(Tr. p. 2010)

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Q. Mr. Stoneman, I believe you have already testified, have you not, that the private label bleaches sold at somewhat lower prices than the Purex bleach? A. Yes.

Q. And, therefore, a percentage on the comparison of the units, rather than a comparison of the dollars, would result in a slightly higher percentage of the private labels bleach, would it not? A. Well, you——

Hearing Examiner Haycraft: Your total business.

A. (continuing) The comparison given was the percent of the dollars to the total dollars of sales, so you cannot compare the percentage of units of private labels to the total units of sales, because now you are comparing peanuts and apples.

By Mr. Royall:

Q. Yes, sir, but you can compare the total units of private label bleach with the total units of Purex bleach, can't you?

* * * * *

A. Yes.

Alan C. Stoneman—Cross

By Mr. Royall:

Q. You do have those unit figures, because you testified

(Tr. p. 2011)

as to the difference in market share, whether you figured one way or the other, didn't you? A. That's right.

Q. Yes. Now, we ask for those.

Hearing Examiner Haycraft: His question, Mr. Stoneman, is whether or not if you figured that percentage of your private brands business on a unit basis would be a higher percentage than on a dollar basis.

The Witness: That's correct.

Hearing Examiner Haycraft: Do you have any idea of how much higher; do you have a figure on that?

The Witness: Well, instead of being on the order of 1½ percent, it would be on the order of about 1.8 percent. That is an estimate, your Honor.

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(Tr. p. 2012)

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Mr. Royall: It has been suggested off the record, your Honor, that that would increase the ratio from 1.5 to somewhere between 1.8 and 2 percent. We will not, under those circumstances, ask for the figures, because we wanted them only for the purpose of getting that determination.

Hearing Examiner Haycraft: All right.

Mr. Tincher: May the record show I agree with counsel's statement?

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(Tr. p. 2015)

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REDIRECT EXAMINATION

By Mr. Tincher:

Q. You testified yesterday afternoon your TV program schedule had finished.

Would you tell us what media you are using now in place of TV? A. We are using magazine advertising, some newspaper, some

(Tr. p. 2016)

radio spots in limited areas.

Q. Would you tell us why you did not continue the TV program when it finished?

* * * * *

A. We discontinued the TV program because we had spent all the money that was budgeted for the current fiscal year, and allocated to TV.

By Mr. Tincher:

* * * * *

Q. Now, I think you will recall, Mr. Stoneman, that Mr. Royall asked you if you were familiar with a drop in market

(Tr. p. 2017)

share as reported in Nielsen from 1952 to 1957 of the Purex Corporation.

Do you recall that? A. Yes.

Q. And, also, a similar drop subsequent to October, 1956 until August of 1957.

Do you recall that? A. Yes.

Q. Now, have you had a chance to check Nielsen to see if the percentages given you in the question, the market share percentages, were correct? A. I have picked up some additional data on Nielsen which I have before me with respect to our market share, Purex's market share,

in relationship to the total market. This data is not tabulated on the same—for the same periods as the data that Mr. Royall showed me.

* * * * *

The Nielsen data is from June 1st to May 31st, whereas, our fiscal year is from July 1st to June 30th, Nielsen being compiled on a two-month basis, and those two

(Tr. p. 2018)

months not fitting our fiscal period, this is as close as we can get to a Nielsen compilation ir relation to Purex's fiscal year.

* * * * *

Q. All right, sir. Now, let me ask you if your investigation of Nielsen does indicate a decrease in market share for the Purex Corporation on liquid bleach from 1952 to August 1 of 1957? A. Not for all periods. Specifically using the period June-July, 1952 to April-May, 1953 as a base period, the following percentage change occurred for the brand Purex liquid bleach; from June-July, 1952, April-May, 1953 to June-July, 1953, April-May, 1954, a loss of 4.6 percent.

During this period, the total market expanded 2.7 percent.

* * * * *

(Tr. p. 2019)

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Q. Now, the period you have just mentioned, sir, was this prior to acquisitions as described by Mr. Royall in his questioning to you yesterday? A. Yes, this was prior to any acquisition of a new product by Purex.

Q. Was this prior to the change from broker system of selling to direct salesmen? A. Yes.

Q. Now, let me ask you if your research of Nielsen will indicate whether there has been any change in market share subsequent to changing from the broker system to direct salesman system?

* * * * *

A. Yes. The period, looking at a period, June-July 1955 to April-May of '56, which is the period just prior to the change to brokerage selling that occurred in October of '56, in comparing that period to the June-July, 1956, April-May, 1957 period, we find that the June-July '56 to April-May, 1957 period is the only period in the last five years where Purex's gain in market share equalled the gain in total market. As a matter of fact, it slightly exceeded it. Purex's increase was 4.8 percent, and the gain in the total market was 4.6 percent.

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(Tr. p. 2020)

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The Witness: This period includes——

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——several months of direct selling.

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(Tr. p. 2023)

By Mr. Tincher:

Q. Just one final area of inquiry, sir: You testified this morning concerning the 90-day period in the San Francisco Bay area where Purex was selling at a higher price than Clorox.

(Tr. p. 2024)

Now, do I understand correctly that that is not true today? A. Yes.

Q. Will you explain to use why during this 90-day period the Purex price was higher? A. I said that period was

about 90 days. I didn't check the exact dates on it; about 90 days, I think, is proper, is correct.

Purex increased the price of liquid bleach in the San Francisco Bay area coincidental with the introduction of its new package. This increase was a minor one; it was 6 cents on half gallons and 4 cents on gallons.

Q. Is that a case? A. Per case, case of half gallons, case of gallons.

We put this increase in effect because there were some extra costs in manufacturing the new product; however, our experience in the market and the tendency of the retailers to take a 2-cent mark-up at the retail—on the retail shelf as a result of the 1-cent per unit increase discouraged us from holding the price in effect and we withdrew the price just recently.

Q. Now, when you were speaking of 2 cents, was that the bottle or case? A. Two cents per unit.

Q. Two cents per bottle?

(Tr. p. 2025)

A. Yes, 6 cents per case on half gallons is 1 cent per unit, and 4 cents per case on gallons is 1 cent per unit. We hoped the retailer would only take a one-cent mark-up on each type, the half gallon and the gallon, but experience indicated that he took a bigger markup, and the sales were not satisfactory so we withdrew the price increase.

Q. This is one final, final thing. I would like to show you lines 3 through 6, sir, on page 1781 of the transcript.

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(Tr. p. 2026)

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Hearing Examiner Haycraft: Will you read the answer and then read what it should be?

The Witness; The answer is: "In Life it is about two million, I think it's 2,100,000 in Ladies Home Journal—in Better Homes and Gardens it's about a million, and Ladies Home Journal about 600,000."

The statement should have been, I think, Your Honor,—excuse me.

The statement should have been, in Ladies Home Journal and in Better Homes and Gardens it's about a million dollars, and the balance of the statement and Ladies Home Journal about 600,000 should be struck.

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(Tr. p. 2027)

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Hearing Examiner Haycraft:

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I would like to have the witness explain why the change is made. In other words, did you consult some records?

The Witness: No.

Hearing Examiner Haycraft: Did you make a mistake in your testimony?

The Witness: I do not believe I have. This is not exactly what I said.

Hearing Examiner Haycraft: Yes, I am sorry to contradict you, it is exactly what you said because I listened very carefully. I read that transcript again yesterday.

The Witness: Well, my statement with respect to Ladies Home Journal, the amount 600,000, was in error or it, should be about a million dollars.

Hearing Examiner Haycraft: All right.

That is an illustration of a witness, a witness having a right to correct an erroneous statement in the record, whether it is his mistake or somebody else's. This happens to be his mistake. I was listening very carefully.

* * * * *

Proceedings

(Tr. p. 2062)

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Room 1310, 226 West Jackson
Chicago, Illinois

Wednesday, May 14, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2063)

PROCEEDINGS

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(Tr. p. 2064)

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Mr. Royall: Yes. Since that time, Your Honor, Mr. Tincher and I have discussed the matter and had a little correspondence about it, which is not necessary to read, I think, in which he was unwilling for a stipulation to be made that it was merely market trend and therefore the matter resolved itself into whether we would stipulate whether or not it was, it could be considered a market share. This morning I presented to these gentlemen a suggested stipulation which with a few small changes which the attorney suggested, has been I understand agreed upon, and I want to put it in the record, but I'd like first to give you our feeling about it. Of course we realize that a stipulation along the lines I have just

(Tr. p. 2065)

mentioned would facilitate the progress of the plaintiff's case, or the complainant's case, and would on the other hand make it unnecessary to have a great deal of testimony as to the method of collecting this evidence, how

they arrived at it and so forth. Weighing these considerations we have decided that in order to avoid the delay incident to a lot of testimony as to detail and in aid of expedition of the case, we will take the step which certainly as a general rule is not desirable to facilitate the proof but we are so anxious for this case to move along we will propose a stipulation with the understanding that it will not be necessary to have testimony to cover the same ground which would possibly take a long time. We offer this stipulation in substitution for such testimony. As appears in the stipulation which I will read in a minute we have ascribed to Nielson really more weight or more credence, I won't say weight, the matter of weight is still a matter for the Court to decide, more credence than we think is appropriate. However, we have decided in favor of that course in order that this case will move. The stipulation reads as follows, Your Honor.

* * * * *

(Tr. p. 2066-A)

STIPULATION

The parties hereto stipulate that complainant has asserted and, on the conditions hereinafter set forth, the respondent does not contest, that Nielsen Food Index figures relating to liquid bleach for the period from January 1, 1952 until December 1957, represent as to retail grocery stores the actual quantities and dollar values of purchases and sales, the inventories and days supplies, the percentages of market share or movement, the store count and commodity distribution, the stock location and out-of-stock condition, the wholesale and retail prices, and two special reports and one advertising report, all as they relate to liquid bleach.

It is agreed by the parties that the respondent consents hereto solely in the interest of expedition and without admission as to the materiality or relevancy of any part of the said Nielsen Food Indices which might be offered in evidence, and with the understanding and agreement that this stipulation does not commit the respondent to the accuracy or validity of any part of the Nielsen Food Index either in any other proceeding or generally, and that this stipulation is not to be offered in evidence or otherwise used outside this proceeding and is not to be used to reflect on any allegation in the answer herein or on any witness of respondent who has testified or may tes-

(Tr. p. 2066-B)

tify as to his interpretation or use of the Nielsen Food Index or its effect.

* * * * *

(Tr. p. 2067)

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Salvatore Giachetti

was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Deveny:

Q. State your name and address for the record. A. Salvatore Giachetti, 9222 South Bell Street, Chicago, Illinois.

Q. What company are you affiliated with? A. With Linco Products Corporation.

Q. And what is your position with that company, sir? A. President of the company.

Q. And how long have you been president of the Linco Company? A. Since 1931.

* * * * *

By Mr. Deveny:

Q. Will you tell us, sir, what business this company is engaged in? A. In manufacturing Linco Bleach.

Q. And does the company produce any products other than Linco Bleach?

(Tr. p. 2068)

A. Dry bleach, ammonia, and liquid detergent.

Q. And will you tell us, sir, the brand names for these other products other than bleach? A. Linco Ammonia, Linco Dry Bleach, Linco Fine Fabric Bleach and Linco Detergent.

Q. And is Linco the brand name? A. Yes.

Q. And where do you produce your bleach? A. 2155 West 80th Street.

Q. Is that the only location you have? A. Yes.

Q. Is that the City of Chicago, sir? A. The City of Chicago.

Q. What is the chemical composition of, roughly, of your Linco bleach? A. Part is caustic soda, part is chlorine and water.

Q. Would this be known as a sodium hyperchloride solution? A. It is.

Q. And what percentage of sodium hyperchloride is the solution of your bleach? A. 5.25.

* * * * *

Q. Do you manufacture your bleach, or do you use concentrate? A. We manufacture.

* * * * *

(Tr. p. 2069)

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Q. Could you tell us, sir, what sales area do you sell your bleach within? A. We sell in the middlewest; that takes in Illinois, Indiana, Michigan, Wisconsin, part of Iowa and part of Ohio.

Hearing Examiner Haycraft: You don't get into Minnesota?

The Witness: No.

By Mr. Deveny:

Q. Now for the other products that you described that you manufacture, do you sell those in the same area, your other products? A. Yes.

Q. And what sort of a sales organization do you have, sir, for the sale of your bleaches? A. We have twenty-five salesmen.

Q. Now, is that the only manner in which you sell bleach, through your own salesmen? A. Yes.

Q. Now do these salesmen sell your other products as well as the bleach? A. Yes.

Q. And do you have an administrative officer or head of these salesmen?

(Tr. p. 2070)

A. Yes, we have four district men and one general sales-manager.

* * * * *

Q. Could you tell us, sir, to what type of customer do you sell your bleaches and your—your bleaches first. A. We sell chains, co-ops and any independent jobbers.

Q. Do you sell to the retail store itself or is there an intermediate customer? A. We sell to the jobber and the jobber in turn sells it to the stores.

Hearing Examiner Haycraft: Is that true of chain stores? You sell direct to chain stores?

The Witness: Yes.

Hearing Examiner Haycraft: And co-ops?

The Witness: Yes, and independent jobbers.

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(Tr. p. 2071)

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Q. Are your sales at a delivered price? A. Beg pardon?

Q. Are your sales made at a delivered price?

Hearing Examiner Haycraft: He means price delivered to the store.

The Witness: Yes, same as the jobber.

By Mr. Deveny:

(Tr. p. 2072)

Q. What you mean, sir, if you sell to the jobber, the price is to his location, delivery to his location? Does that explain it? A. Yes.

Q. And what methods of transportation do you use in delivering your bleach? A. We use trucks.

Q. Your trucks or independent trucks? A. Our trucks.

Q. When you deliver at a delivered price does that include the freight cost, transportation cost? A. It includes everything.

Q. Could you tell us, sir, what sizes of liquid bleach you sell? A. We sell quarts, half gallons, and gallons.

Q. You do not sell pints I take it? A. No.

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(Tr. p. 2073)

Q. Now, getting back to the freight cost and your delivered price; is there any limitation upon the sales area of your bleach, your liquid bleach that would be based on freight cost? A. Yes, I would say three hundred miles.

Hearing Examiner Haycraft: Three hundred?

The Witness: Yes.

Hearing Examiner Haycraft: You feel you can't afford to deliver more than that with your trucks?

The Witness: No, we won't be able to compete.

Hearing Examiner Haycraft: With people located in another area?

The Witness: Yes, sir.

By Mr. Deveny:

Q. That would be the freight basis? A. Yes.

Q. Could you tell us, sir, what other bleach brands are sold in your sales territory, in grocery stores? A. Well, number one, Clorox, two, Fleecy White, three, Hilex; Purex, Roman Cleanser.

Q. Are you familiar with the sodium hyperchloride content of those bleaches? A. Yes.

Q. Are they any different from yours? A. As far as we know there's no difference.

(Tr. p. 2074)

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Q. Could you tell us, sir, what type of retail stores handle your bleach? A. Any retail stores, from the chain down to the small stores.

Q. Would that be in the grocery field as opposed to—— A. All in the grocery field.

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(Tr. p. 2075)

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Q. Is there a brand of bleach that is a predominant competitor with your bleach in this area? A. Yes. I would say number one competitor is Clorox.

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(Tr. p. 2077)

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Q. Does your company advertise its products, sir? A. Yes.

Q. Do you advertise your liquid bleaches? A. Yes.

Q. And in what media of advertising do you employ? A. We use newspaper, radio and T-V.

Q. When you say radio and TV, is that spot advertising or program? A. Spot.

Q. And is there any frequency to the basis of using this media? In other words is it a continuous use of all these media or is it seasonal in any way? A. I would say it's seasonal. We usually have promotion in spring and fall, and that's the time we use TV especially.

Hearing Examiner Haycraft: What months would that be?

The Witness: Well, let's see, from March to June, September to November.

By Mr. Deveny:

Q. And why would you not advertise every month?

(Tr. p. 2078)

A. Because we find that that is the time that people use more bleach than any other time.

Q. And why is it necessary, sir, to advertise liquid bleach if you feel it is necessary? A. Well, we find that that's the only way to sell it. If we don't advertise, we won't be able to sell it.

Q. Have you found any particular media of advertising to be more effective in advertising your bleach than any other media? A. Well, I would say the TV would be more effective. Of course it is more costly.

Q. When you advertise on TV, sir, do you advertise one product at a time or how do you work that? A. We advertise all products more or less.

Q. And why would that be, sir?

* * * * *

The Witness: We advertise all because we, that's the only way that we can sell it. We couldn't advertise just one and not the other. Of course the bulk of the advertising would be in the liquid bleach rather than the others.

By Mr. Deveny:

Q. Have you ever used any TV programs, ever sponsored

(Tr. p. 2079)

any TV programs, your company. A. Yes.

Q. How long ago was that or is it going on at present? A. It is going on now.

Hearing Examiner Haycraft: Is that a program or spot?

The Witness: No, all spots.

* * * * *

Q. When you buy this TV advertising, sir, on what time basis do you buy your advertising?

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The Witness: We usually buy what we call a

(Tr. p. 2080)

package spot, which means you get fourteen, fifteen or twenty spots and you have to accept it any time of the day.

Hearing Examiner Haycraft: That is so many a day?

The Witness: So many a day, or week.

Hearing Examiner Haycraft: So many each week.

By Mr. Deveny:

Q. Do you buy that each week? A. No, thirteen weeks.

Q. Are you able to buy it for a year on a year basis? A. No, we don't buy on a year basis.

Q. Why would that be, sir? A. Because we don't use them all year around.

Hearing Examiner Haycraft: Do they quote to you at thirteen weeks, a certain number of weeks?

The Witness: Yes, the minimum that you can buy is thirteen weeks. Then if you are willing to buy another thirteen——

Hearing Examiner Haycraft: In other words that makes the twenty-six?

The Witness: Yes.

Hearing Examiner Haycraft: What do you usually buy?

The Witness: Thirteen weeks.

By Mr. Deveny:

(Tr. p. 2081)

Q. Do you advertise nationally in any media? A. No.

* * * * *

Q. Do you have any re-purchase agreements with your customers as to your products?

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The Witness: We don't have an agreement, but we have a policy to repurchase, I guess, if they can't sell it.

By Mr. Deveny:

Q. Do you give free merchandise prizes to customers selling your bleach? A. Yes.

Q. Do you use count and recount in your liquid bleach?

Hearing Examiner Haycraft: You'd better explain for the record what that is.

(Tr. p. 2082)

By Mr. Deveny:

Q. Do you understand? A. I understand.

Q. Would you explain what it is? A. Suppose you want to have a ten cents deal for a salesman; you count the cases, and after thirty days, you re-count them and see how many they sold.

Hearing Examiner Haycraft: Count the cases in the warehouse and on their shelves?

The Witness: No, just in the warehouse.

Hearing Examiner Haycraft: And whatever is sold during that period of time, you give them the discount is that it?

The Witness: Yes.

Mr. Royall: What did you say about the answer before that? that he did not have it?

Mr. Deveny: He hasn't answered it yet.

By Mr. Deveny:

Q. Now, sir, does your company use that discount—I mean, does your company use that count and recount? A. Very seldom.

Hearing Examiner Haycraft: But you have used it, is that right?

The Witness: Yes.

By Mr. Deveny:

(Tr. p. 2083)

Q. On what basis would you use that, sir, if you, let us say, have used it very seldom? What is the basis for using it? A. Well, we need cooperation by the salesmen, the jobber's salesmen; and then we allow ten cents a case for the salesman. So we work for thirty days, pro-

moting and selling Linco, and then, at the end of the thirty days, they get ten cents a case, whatever is sold.

Q. What is the purpose for using it? A. The purpose is to get jobbers' salesmen to sell our product.

Q. I understand—— A. I mean, send it to the jobbers' salesmen.

Q. To the jobber's salesman, instead of your own.

Hearing Examiner Haycraft: He gets ten cents?

The Witness: Yes. The jobber's salesman.

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Q. Is your company affiliated with or a subsidiary of any other company, sir? A. No.

Q. Does your company own any interest in any other liquid bleach producer? A. No.

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(Tr. p. 2084)

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Q. Are you familiar with the Nielsen Food Index for liquid bleaches? A. Yes.

Q. Does your company purchase that? A. No, we don't.

Q. Why do you not purchase the Nielsen Bleach Index? A. Because it is expensive, an extra expense, and by having our sales force in the territory, we don't think it is too advantageous.

Hearing Examiner Haycraft: You don't think what?

The Witness: By having our salesforce in the territory, we don't think it is necessary to have it.

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(Tr. p. 2086)

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Q. Does your company have any dealer or jobber coop-

erative merchandising plan on this liquid bleach? A. Yes, we have.

Q. What would that amount to, sir? A. Well, we allow five cents a case for that advertising.

Q. Why do you offer that, sir? A. Because the whole bleach industry is doing it.

* * * * *

Q. Is that five cents—how do you figure that? What is the five cents for?

(Tr. p. 2087)

A. For advertising in their newspapers. You get two features a quarter in their own newspaper.

Q. Do you require proving or proof of the two features per quarter? A. Yes, sir.

Q. Does your company have an allowance or expenditure for purchasing in-store promotion space? A. What kind of promotion?

Q. I have in mind the floor space, end displays, islands, baskets, off-shelf. A. In some territory, where we need——

* * * * *

The Witness: Some territory where we need promoting of products, we use a display, floor display contract.

Hearing Examiner Haycraft: What kind of——

The Witness: Floor displays.

Hearing Examiner Haycraft: What does that call for? What do they have to do?

The Witness: Display the merchandise on the floor.

By Mr. Deveny:

(Tr. p. 2088)

Q. What do you pay, or what is your part of the contract? A. We pay ten cents a case for displaying it.

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(Tr. p. 2089)

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Q. Are you aware, sir, that the Procter & Gamble Company acquired the Clorox Chemical Company at approximately August 1, 1957? A. Yes.

Q. And do you have an opinion as to the effect of this acquisition upon your business?

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The Witness: I have an opinion, yes.

By Mr. Deveny:

Q. Would you state your opinion?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Overruled.

The Witness: Well, I would say that this acquisition would create a situation where Linco Company will have a hard time to compete. When you stop to look at

(Tr. p. 2090)

the resources that they have, and the type of promotion that they put up when they buy or put out a new item, you can see that things are very serious. When they start a saturating campaign—that means radio, newspapers, TV, plus sampling coupons, all that put together, including floor displays in the stores, which they would be able to get following all this advertising; and not only that, but they would be able to get probably more shelf space than competition, and all that together would eliminate the small manufacturer like us.

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(Tr. p. 2094)

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Mario Giachetti

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: Your name is——?
The Witness: Mario, M-a-r-i-o, Giachetti.

* * * * *

(Tr. p. 2095)

By Mr. Deveny:

Q. Would you tell us, sir, what company you are affiliated with? A. Linco Products Corporation.

Q. What is your position with that company, sir? A. Secretary-Treasurer.

Q. How long have you held that position? A. Since 1931.

Q. How long has the company been in business? A. Since 1925.

* * * * *

(Tr. p. 2100)

Mr. Giachetti, I would like to hand you Commission's Exhibit 464 for identification, and ask you if you can identify that for us, please. A. Yes.

* * * * *

Q. I will ask, sir, did that come from the books and records of the Linco Distributing Company as used in the ordinary course of business? A. Yes.

Q. Were these figures prepared under your supervision, or did you prepare them? A. Under my supervision.

Q. And normally, in the course of the business of your company, are your duties such that you would work with these books, records, and what have you, and would be familiar with them? A. Yes.

Q. And this document would actually show the sales figures purported to be shown thereon. A. On the books, yes.

(Tr. p. 2101)

Mr. Deveny: At this time, your Honor, I would like to offer Commission Exhibit 464 for identification into evidence.

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(Tr. p. 2104)

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Hearing Examiner Haycraft: The Exhibit 464 for identification will be received in evidence and placed in camera.

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(Tr. p. 2106)

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By Mr. Deveny:

Q. Looking at Commission Exhibit No. 464, sir, I notice that you have totals for the years 1952 through 1957, for Linco Liquid Bleach. A. Yes.

Hearing Examiner Haycraft: It says "Linco;" it doesn't say bleach. Unless it says it in the caption. What does it say in the caption?

Mr. Deveny: I preceded myself. I will change the question.

By Mr. Deveny:

Q. You also have the caption "Bright Sail." A. Yes.

Q. Is that a liquid bleach, too? A. Yes.

Q. One further question on this exhibit: Are these representative net sales? A. Yes.

Q. Rather than gross? A. Yes.

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Mario Giachetti—Direct

(Tr. p. 2108)

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Q. I would like to hand you Commission's Exhibit No. 465 for identification, and ask you if you can identify that for us.

The Witness: That is the prices.

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(Tr. p. 2109)

Q. Are they private prices? A. No; they are prices for all our customers.

Hearing Examiner Haycraft: To your customers?

The Witness: Yes. We sent it to them, or send it to them. Yes.

By Mr. Deveny:

Q. Were those prepared from your usual price lists, used in the course of your business? A. Yes.

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Mr. Deveny: I would like to offer this at this time, your Honor.

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(Tr. p. 2120)

Hearing Examiner Haycraft: Before you ask any more questions, let the reporter mark the exhibit as received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 465, was received in evidence, in camera.)

Hearing Examiner Haycraft: Proceed.

By Mr. Deveny:

Q. Let me ask you, sir, the Bright Sail that we have been speaking of—to whom does your company sell that product? A. To the A&P stores.

Q. And I notice that there is a price difference between the two bleaches, between Bright Sail and Linco. Is there any explanation for that, sir? Why are they different? Is there any explanation? A. Yes.

* * * * *

The Witness: They demand a lower price, saying that "we don't need to advertise and have any salesmen—have any sales expense with it; so we can quote a lower

(Tr. p. 2121)

price."

Q. At this point, sir, I would like to ask you what other brands of bleach does A&P sell in this area, if you know? A. Clorox, Fleecy White, Linco, and the Bright Sail, as far as I know.

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(Tr. p. 2122)

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Q. Sir, I notice there are columns headed T/L, P/TL, and L/TL, and could I ask you, sir, what those particular symbols indicate or mean? A. Yes. It means truckload, part truckload and less truckload.

Q. And why would those prices be different under each of those columns? A. Truckload is of one size at one price, a truckload of mixed merchandise at a different price, and less truckload is a different price.

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(Tr. p. 2136)

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Q. I notice, Mr. Giachetti, that there is an offer on these labels for some nylon stockings. Can you tell us how long that offer has been in effect? A. About a year and a half.

Q. Is that a premium that would be termed a self-liquidating premium?

(Tr. p. 2137)

A. Yes.

Q. Is that available to your bleach consumers in your entire area? A. Yes.

Q. I see. Mr. Giachetti, getting back to the price lists you were speaking of early this morning, let me ask you this. Is the Linco Bleach price on that list the same price to all your customers? A. Yes.

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Q. Now, other than the discounts that are shown, the

(Tr. p. 2138)

quantity discounts shown on that exhibit, does the Linco Company have any other discount on its liquid bleach?

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The Witness: Not except the two percent ten days.

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Q. Does your company produce a dry bleach? A. No, we don't produce it, we sell it.

Q. Compared to your liquid bleach, sir, what portion of your total sales would the sale of dry bleach represent?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Overruled.

The Witness: It is about six percent.

Mr. Royall: What?

Hearing Examiner Haycraft: Six percent.

By Mr. Deveny:

(Tr. p. 2139)

Q. Could you tell us, sir, do you have just one type of dry bleach or do you have several types? A. We have two.

Q. Could you describe those for us please, sir? A. One is a perborete bleach, that's the base, and that is all for fine fabric items.

Q. And the other? A. The other is for heavy duty laundry and it is a chlorine base bleach.

Q. How long have you produced the heavy laundry bleach, sir? A. The heavy——

Q. I mean sold. A. Oh, about seven months.

Q. And the fine fabrics?

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Q. And for the fine fabrics, sir? A. The fine fabrics about four years.

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(Tr. p. 2140)

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Q. Could you tell us, sir, what factors you must consider in setting the prices of your liquid bleaches?

* * * * *

The Witness: First thing we have to look at the competition we have. And——

By Mr. Deveny:

Q. Who would that be in this case? A. Number one would be the Clorox, and the next would be Fleecy White.

Q. When you say you must look at your competitors, what are you referring to, that you must look at?

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(Tr. p. 2141)

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The Witness: Well, we can't go out and price ourselves too high, too far away from our competition. We are actually pricing between.

By Mr. Deveny:

Q. Between who? A. Between Clorox prices and the Fleecy White.

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Q. Does anybody in this area sell higher than Clorox?

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The Witness: No.

By Mr. Deveny:

Q. Do you have to consider any other factors in pricing your bleach?

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(Tr. p. 2142)

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The Witness: Yes, we consider our cost.

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(Tr. p. 2143)

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Q. Is there any difference between your bleach and the Clorox bleach as it stands in the bottle, sir? A. Not that we know.

Q. Now, sir, when your Bright Sail bleach that we have had some testimony about, is there any difference between that bleach and your liquid bleach? A. No.

Hearing Examiner Haycraft: Which bleach?

(Tr. p. 2144)

Mr. Deveny: The Linco, sir.

Hearing Examiner Haycraft: And what?

Mr. Deveny: And the Bright Sail.

The Witness: No.

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Q. May I clarify that and say, may I change my question, Your Honor. Is there any scientific research facility connected with your company?

(Tr. p. 2145)

A. No, but we have a chemist in the company.

Hearing Examiner Haycraft: You have a chemist in your own company?

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By Mr. Deveny:

Q. Is the production of liquid bleach a highly technical subject? A. It is not highly technical, but it has to be exact in the procedure of making it.

Q. What would that be? A. For instance if the temperature of the liquid bleach goes up a hundred two degree it becomes a reaction and that will have an unstable solution, it couldn't be sold.

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(Tr. p. 2146)

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Q. Is the machinery expensive that is involved in your process for producing liquid bleach? Well, I wouldn't say expensive; it is costly.

Q. What would be the value of the present machinery you have? A. Machinery including tanks and all of that, about two hundred fifty thousand dollars.

Q. Is this machinery readily available on the open market? A. It is available, yes, on the market in about sixty day delivery.

Q. Is the machinery manufactured according to a standard design? A. Yes.

Q. Can you use it for any other purpose? A. No.

Q. Is your company at the present time producing liquid bleach at its full capacity? A. No, we could produce more.

Q. Under what circumstances could it produce more? What would you have to do?

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(Tr. p. 2147)

The Witness: Well, we have one shift. We could readily go into two shifts and with a little cost produce twice as much.

By Mr. Deveny:

Q. Has your company ever considered expanding its sales territory? A. No, we could not do that unless we would have a factory in the place where we want to expand because of the cost of transportation would be too high over two hundred fifty miles.

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(Tr. p. 2148)

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Q. Has your company experienced price increases since 1952, sir? A. Yes.

Q. And what factors would be contributory to increasing the prices you have?

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The Witness: Mostly the cost, increased cost of bottles and to some lesser extent the cost of chemicals and freight on chemicals.

By Mr. Deveny:

Q. Are these cost increases, is that it, cost increases to you that would have been reflected in your increase? A. Yes.

Q. Have you passed all of those cost increases on to your customers?

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(Tr. p. 2149)

A. No.

Q. And why haven't you been doing that?

* * * * *

The Witness: Some time we absorb it, and some other times we have to pass it on.

By Mr. Deveny:

Q. Why would you absorb it, sir?

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The Witness: If we can make it, we'll stay within the old price.

By Mr. Deveny:

Q. Has your company ever used an off label price on its liquid bleach? A. Yes.

Q. When was that, sir? A. Last year in October, '57.

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Q. Well, could you explain what an off price label is? A. It is printed on the label, five cents off of the regular price.

Q. And what—was that used in your entire sales

(Tr. p. 2150)

territory? A. Yes.

Q. And was there any result that was apparent to you from the use of this label? A. Yes.

Q. What was that result?

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The Witness: We had that sale for about thirty days and we sold a little bit better than twice as much as the month previous.

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(Tr. p. 2153)

Q. Could you tell us, sir, what percent of your total gross sales is represented by sales of liquid bleach?

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The Witness: About ninety-four percent.

Hearing Examiner Haycraft: Ninety-four percent?

The Witness: Yes.

Hearing Examiner Haycraft: I thought you said the dry bleach was six percent.

The Witness: Well, all the other products. Probably ninety-two percent. I don't have the figures present in my mind.

Hearing Examiner Haycraft: You think about ninety-two percent?

The Witness: Ninety two percent of bleach and eight all the rest.

Hearing Examiner Haycraft: The reason I was questioning, it came up to a hundred and there was some other stuff left over.

By Mr. Deveny:

Q. Would that ninety-two percent include the dry bleach or exclude it? A. No.

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(Tr. p. 2162)

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Mr. Deveny: Miss Reporter, may I have marked as Commission's Exhibit 469 for identification a single sheet typewritten purporting to give a summary of advertising for the Linco Distributing Corporation.

(The document referred to was marked Commission's Exhibit 469 for identification.)

By Mr. Deveny:

Q. I would like to hand that to you, sir, and ask you if you know what that is? A. Yes.

Q. Can you identify that? A. Yes.

Q. Would you tell us, please, what that does show?

A. This is the advertising expense for the years 1952, 1953, 1954, 1955, 1956 and 1957.

Q. I notice there is a single figure for each year. Is

(Tr. p. 2163)

that the total? A. That is the total for the year.

Q. Does that include advertising only or does that include advertising and promotional expenditure? A. Advertising and promotion.

Q. Was this prepared at or under your supervision? A. Yes.

Q. From company records and books? A. Yes.

Q. Are these company books and records used in the ordinary course of business of the corporation? A. Yes.

Mr. Deveny: I would like to offer that at this time, and my understanding is the witness desires it to be placed in camera.

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(Tr. p. 2165)

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(The document referred to, heretofore marked Commission's Exhibit 469 for identification, was received in evidence.)

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(Tr. p. 2166)

Edwin B. Hahn

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Deveny:

Q. Will you please state your name and address? A.

Edwin B. Hahn—Direct

Edwin B. Hahn, 5968 Howard Avenue, LaGrange Highlands, Illinois.

Q. Will you tell us, sir, what company you are affiliated with? A. Linco Corporation.

Q. What is your position with that company? A. General sales manager.

Q. How long have you been employed in that position? A. Since November of 1956.

Q. What positions did you hold prior to your employment with Linco? A. Prior to that time, I was a sales manager for Doeskin Products Corporation out of New York City, and prior to that I spent some 15 years with Colgate in the soap division, in both as sales manager.

Q. What are your present duties with Linco? A. Well, I set up and oversee the complete marketing operation for the company.

Q. Does the administration of the sales force come under

(Tr. p. 2167)

your position? A. That is correct.

Q. Are you familiar, then, with Linco's promotional activities? A. Yes, I am.

Q. And their advertising activities? A. Yes, sir.

Q. Do you have any familiarity with the budgeting of advertising and promotional allowances? A. Yes, I do.

Q. Are you familiar with the Proctor and Gamble Company's promotional activities? A. Yes, I am.

Q. And of their selling activities? A. Yes.

Q. What would be the basis for your knowledge in that instance? A. Well, I have spent my entire life, adult life in the food field, and work as a direct competitor to Proctor and Gamble for some fifteen years in the soap business.

Q. Are you familiar with the Clorox Company's selling activities since August 1, 1957? A. Yes, I am.

Q. How does Linco administer its sales area—what is the breakdown?

(Tr. p. 2168)

A. Of the sales personnel?

Q. Well, first, the geographical area? A. Oh. We cover the State of Illinois, the entire State of Wisconsin, about two-thirds of the State of Michigan, half of the State of Indiana, and a portion—I am not prepared to give you the percentage of the State of Iowa, and the State of Ohio.

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(Tr. p. 2169)

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Q. Now, can you tell us, sir, how Linco would promote its liquid bleach, or how does it promote its liquid bleach? A. We promote our product through means of advertising media which include newspaper, radio, TV spots, and also used to supplement that is so-called consumer offers which promotes the product on through, and sells it through to the consumer, the consuming public.

* * * * *

Q. Could you define some of them for us? A. Well, we use off-label promotions which are very

(Tr. p. 2170)

popular and have been for several years now.

There have been instances in so-called low spot areas where we have used in a limited way couponing activity. We have used self-liquidating premiums to a lesser degree, and I believe that just about covers it.

Q. You say couponing is used in low spot areas. Would that indicate it is not used in or on a full scale territorial basis? A. We have never, or the company has never

to the best of my knowledge used couponing activities on an overall basis because of the excessive expense involved.

Q. Now, the other activities that you describe, are they used on a full territorial basis? A. Yes. So far as off-label promotion is concerned, that is used on a company-wide operation.

Q. Is there a frequent use made of that? A. Pretty generally we confine a bleach promotion to the spring and fall of the year, generally for a 30 day period only.

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(Tr. p. 2171)

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Q. Let me put it this way. What are the competitive factors that you have to consider in selling your liquid bleach? A. Well, promotional activities and promotional efforts put behind our line of bleach products in order to compete with the competition which we are faced with in the various areas, to enhance our position in the market, or in many other cases to maintain our share of the consumer usage market in those areas.

Does that answer your question?

Q. I think so. What effect does shelf space in the grocery retail outlets have on the sales of your liquid bleach? A. Well, it is the prime factor. Without adequate and ample shelf space you are out of business.

Q. What determines whether or not liquid bleach will obtain shelf space?

* * * * *

The Witness: The determining factor as to the amount of shelf space that you received in today's super market is brought about by the amount of pre-selling that you are able to do in all forms of promotional and advertising activity to create the turn-over that is neces-

(Tr. p. 2172)

sary in modern-day retailing.

Without the so-called consumer demand or consumer acceptance, you receive no shelf space.

By Mr. Deveny:

Q. Is there a principal brand with which you compete in this sales territory in liquid bleach? A. I would say on an overall basis the brand would be Clorox.

Q. Why is that brand a principal competitor?

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The Witness: Well, I can best explain that to you by reason of this being the only brand to my knowledge that is in national distribution. In other words, it is marketed in a substantial way in our entire marketing area.

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(Tr. p. 2178)

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Q. Does Clorox liquid bleach lend itself to this type of promotional activity we have been discussing?

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The Witness: Very definitely, it does lend itself to the type of promotional activities that you

(Tr. p. 2179)

have been speaking of because it fits into the general house-cleaning product category.

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Q. Is that a store category? A. Yes.

* * * * *

Q. What would that category include?

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(Tr. p. 2180)

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The Witness: That category would include all types of household cleaning products to take in soaps, detergents, cleansers, starches,—anything that is used in a cleansing, and to include bleaches.

* * * * *

Q. Do you have a problem in obtaining shelf space for your Linco liquid bleach?

The Witness: Yes, we do. Currently, based on our share of the market, we do not feel that we have at this time the proper shelf position.

Hearing Examiner Haycraft: What is your share of the market?

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(Tr. p. 2181)

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The Witness: Between 45 and 50 per cent in the city of Chicago—metropolitan Chicago.

Hearing Examiner Haycraft: What do you base that on?

The Witness: Consumer usage.

Hearing Examiner Haycraft: Have you made any study?

The Witness: Yes, from reports received from various of our direct buy accounts.

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(Tr. p. 2182)

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Q. How do you obtain shelf space?

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The Witness: We obtain shelf space through the promotional efforts on the part of our company in pre-

(Tr. p. 2183)

selling our product to the consumer, and also by reason of the sales and marketing division of our company urging the retailers to give us proper positioning based on our position in the market.

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(Tr. p. 2184)

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Hearing Examiner Haycraft: Well, does it follow, then, that your firm, Linco, has 50 per cent, or approximately 45 per cent of the business of the liquid bleach in the Chicago metropolitan area?

(Tr. p. 2185)

The Witness: We have between 45 and 50 per cent of the current bleach business in Chicago, but we are not enjoying 45 to 50 per cent of the shelf space.

* * * * *

Hearing Examiner Haycraft: I see. Now, what do you base this estimate of 45 to 50 per cent of your sales of liquid bleach on?

The Witness: Well, we don't use Nielsen, but we have used the Tribune Panel poll, which is furnished to us locally here on a regular basis, which shows our share of the market in ounces consumed, or consumer usage, and so on, and also from reports that are obtained from the chains and directly by wholesalers.

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(Tr. p. 2186)

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Q. Are the basic competitive problems in selling soaps, cleansers, and detergents any different from the basic competitive problems found in selling liquid bleach?

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The Witness: The same problems exist.

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Throughout the entire household section.

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(Tr. p. 2189)

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By Mr. Deveny:

Q. Do you have any special promotion for fall or spring house-cleaning drives? A. We pretty generally always run a special promotion on our liquid bleach.

Q. What would be the details of that promotion? How is that operated?

(Tr. p. 2190)

A. We make available to all accounts that we do business with, an off-label offer which has a tendency to stimulate the movement of the product, and enhance our share of the market, or in the cases of markets where we are battling to get a stronger position may enhance us again a little to get a greater share of the market.

Q. Do you gain a greater share of the market as a result of the campaign? A. You do, temporarily. You do not always maintain the gain that is made during the promotional efforts—you drop back, but pretty generally you solidify your position in the market.

Q. Does Fleecy White engaged in that type of——

Hearing Examiner Haycraft: Who makes Fleecy White, by the way?

The Witness: It is the John Puhl Division of Sterling Drug Company.

By Mr. Deveny:

Q. Does Fleecy White and Clorox use these spring and fall house-cleaning campaigns? A. Fleecy White, to

the best of my knowledge, since I have been with the company, have not used this type of promotional activity. Apparently, they have a preference for marketing their product at an every-day low price; they are considerably under the balance of the bleach

(Tr. p. 2191)

manufacturers within our marketing areas as far as costs to the chains or wholesalers are concerned. As relates to Clorox, they have used spring clean-up drives where they used a stepped-up advertising campaign, with point of sale material to include window banners, shelf talkers, shelf strips, et cetera, et cetera.

Q. Has there been any change in the 1958 spring drive of Clorox which was apparent to you?

* * * * *

The Witness: Well, we have noticed a premium offer which currently is being offered on Clorox; in fact, it is now in effect, and also stepped-up activity so far as the TV spots, and newspaper advertising is concerned.

By Mr. Deveny:

Q. In your spring and fall house-cleaning campaign of Linco, do you tie that in with any other product—do you tie your bleach in with any other products? A. No, we promote it on its own.

Q. In what section of the grocery store do you find liquid bleaches shelved? A. In the household section.

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(Tr. p. 2192)

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Q. What are the price differentials between your liquid bleach and all of your competitors in this area?

Hearing Examiner Haycraft: Retail to customers?

Mr. Deveny: Yes, retailed.

The Witness: Well, speaking of a gallon size, would you like me to name the brands?

Mr. Deveny: Yes.

The Witness: Our product, Linco, in gallon size generally is retailing between 53 and 55 cents at the present time. Clorox gallons are retailing anywhere from 55 to 61 in our marketing area and Fleecy White, which is the other principal competitor, their prices are ranging from 45—excuse me—from 49 to 55, depending on the locality.

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(Tr. p. 2193)

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Q. Let me phrase it this way: Do you maintain that price differential in your pricing practice?

* * * * *

The Witness: Do we maintain—would you ask the question again?

Hearing Examiner Haycraft: To what extent do you maintain that differential that you are talking about in your market? You give this general range in prices; has that always been true?

The Witness: We have always—we have been pretty much in the middle bracket.

By Mr. Deveny:

(Tr. p. 2194)

What I am getting at is this: In your pricing policies, do you attempt to maintain that differential between your liquid bleach and the Clorox liquid bleach?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Overruled.

The Witness: No. Our pricing policies are dictated by cost of raw materials, cost of advertising, and the sales costs or marketing costs.

* * * * * *

Q. Let me ask you this: Step by step, how do you determine the price for Linco?

Mr. Royall: Objection. He has just testified how.

Mr. Deveny: Linco bleach.

Mr. Royall: He has just testified to that.

Mr. Deveny: No, your Honor; I think he testified with respect to price differentials. Now I am getting back to the basis of that.

Mr. Royall: I would like to have the previous answer read by the reporter.

(Tr. p. 2195)

Hearing Examiner Haycraft: You had better listen to that previous answer. Read the last answer the witness made.

(Answer read.)

Hearing Examiner Haycraft: Is your answer complete?

The Witness: I will add to that, taking into consideration a reasonable profit.

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(Tr. p. 2204)

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Room 1310, 226 West Jackson
Chicago, Illinois

Thursday, May 15, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * * *

(Tr. p. 2205)

Hearing Examiner Haycraft: This hearing will come to order.

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Mario Giachetti

having been previously duly sworn, resumed the stand and testified further as follows:

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(Tr. p. 2208)

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CROSS EXAMINATION

By Mr. Royall:

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(Tr. p. 2215)

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Q. Now, I believe you stated, did you not, that the Linco Products Corporation was incorporated on June 16, 1931? A. Yes, sir.

Q. Its paid-in capital was $12,000, wasn't it? A. Yes.

* * * * * *

Q. And its present net worth is $210,175?

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(Tr. p. 2216)

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Q. Is that right? A. Whatever the records show.

Q. What do the records show? Don't you know your net worth? A. I wouldn't know from memory.

Q. It is over $200,000? A. Yes.

* * * * * *

Q. Now, the Linco Products Corporation has a net worth of $236,468, does it not?

* * * * * *

The Witness: Yes.

By Mr. Royall:

Q. Have dividend distributions been made from both of those companies over the years?

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Hearing Examiner Haycraft:

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(Tr. p. 2217)

* * * * *

You may answer that question—just that question.

The Witness: About dividends?

Hearing Examiner Haycraft: Have you paid dividends?

The Witness: Yes.

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By Mr. Royall:

Q. Now, before the Linco Products Corporation was organized, and some time before the Linco Products Distributing Company was in operation, you and your brother had a partnership business with just a few hundred dollars investment originally, didn't you? A. Yes.

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(Tr., p. 2235)

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Q. Yesterday you gave some figures on advertising and I don't want to ask you the amount of the figures because those figures are confidential.

I asked you when did you start newspaper advertising?

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(Tr. p. 2236)

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The Witness: About 1929 or 1930.

By Mr. Royall:

Q. Your advertising methods have varied from time to time, have they not? A. Yes, sir.

Q. You have emphasized or have emphasis on one thing at some time, and on another thing at another time, is that right? A. Yes, sir.

Q. Depending on the circumstances existing. A. Yes, sir.

Q. And you have learned that sometimes the public gets tired of one form of advertising and you use another, is that right? A. Yes, sir.

Q. And that same goes for promotion, does it not? A. Right.

Q. Now, you referred, I believe, in your testimony yesterday, to television spots. I will ask you if you have not had a five-minute television program, the Dorsey Connors show.

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(Tr. p. 2237)

A. Yes, sir.

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(Tr. p. 2239)

* * * * *

Q. I believe you testified that your bleach was not made by dilution of a stronger mixture, is that right? A. Right.

Q. Many brands of bleach are made that way, are they not? A. Yes.

Q. You can take the stronger solution and by merely adding water and so on make a liquid bleach of five and a quarter per cent, can you not? A. Yes, sir.

Q. And that is done even by some regular brands, is it not? A. Yes, sir.

* * * * *

Mario Giachetti—Redirect

(Tr. p. 2240)

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REDIRECT EXAMINATION

By Mr. Deveny:

Q. On the five-minute program that you have testified your company sponsors, during cross-examination, is yours the only company, the only company that sponsors

(Tr. p. 2241)

or is sponsoring the show? A. No.

Q. There is no co-sponsor. A. No.

Q. What is the frequency of the program appearing on the air? A. Well, we have two a day, or three days a week.

Q. I am talking about the program—I can't remember the name of the program that Mr. Royall has been talking about. A. It is a daily program. At night.

Hearing Examiner Haycraft: The five-minute program.

The Witness: It is a fifteen minute program, but we get five minutes.

By Mr. Deveny:

Q. Your company has five minutes of the fifteen. A. Yes.

Q. What kind of a program is it? A. Dorsey Connors program. Household hints, suggesting how to run the house and gadgets.

Q. What time of the day does that program appear? A. That is 10:30.

Q. Is that a.m.? A. At night.

(Tr. p. 2242)

* * * * *

Q. Why does your company manufacture bleach in the manner that it does, rather than diluting or concentrating? A. Because it is more economical.

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RECROSS-EXAMINATION

By Mr. Royall:

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(Tr. p. 2243)

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Q. You have got it back on now, haven't you? A. No.

Q. You are going to have it back on in a few days or weeks, isn't that right? A. I don't know.

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(Tr. p. 2244)

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Edwin B. Hahn

a witness called for the Commission, having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

Hearing Examiner Haycraft: Mr. Hahn has a correction to make, too, in his testimony.

The Witness: I was asked a question yesterday in regard to our pricing practices and policies, as to what yardstick we used. In other words, we used—well, I made the statement that we used cost of raw materials, marketing costs and advertising costs in connection with our pricing policies; and I would like to add to that that we have always paid particular attention to Clorox prices, inasmuch as we were never able to, under the former Clorox

ownership, match advertising dollars or come anywhere near matching advertising dollars and ex-

(Tr. p. 2245)

penditures with Clorox, and therefore felt that it would to be our tremendous disadvantage and would injure the sale of our product were we to price our product above Clorox prices.

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By Mr. Deveny:

Q. Mr. Hahn, have you had an opportunity to check the company's records to determine what portion of the

(Tr. p. 2246)

company's sales are sold in Metropolitan Chicago? A. Yes, I have. The figures have been drawn off of our books. It is 61 per cent, Metro Chicago as opposed to the balance of our marketing area.

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(Tr. p. 2248)

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CROSS-EXAMINATION

By Mr. Royall:

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(Tr. p. 2257)

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Q. I will ask you if seven new brands of bleach did not enter the Chicago market in 1957, as shown by the Chicago Tribune Consumers Panel, which you referred to yesterday. A. I am not familiar with it, but it could have been many many more so-called bathtub operations began here on a door to door basis; and they come and go every week. In fact, they even pack the product in our bottles part of the time.

Q. So you have a lot of different competitors, don't you? A. These we do not consider as competition or as competitors.

(Tr. p. 2258)

* * * * *

Q. You know about this Dorsey Connors show, don't you. A. Yes.

Q. Is that on now? A. Yes, sir.

* * * * *

Q. That has recently been resumed, hasn't it? A. Resumed?

Q. The Dorsey Connors show. A. Have we resumed it?

Q. Yes. A. We have resumed it.

Q. In the past few weeks or months? A. Yes.

Q. Now, in promoting Liquid bleach, did you give

(Tr. p. 2259)

away from time to time free cases?

* * * * *

The Witness: We have used it in a promotional way, not in selling bleach, but as was testified here yesterday, in lieu of cashed display allowances.

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(Tr. p. 2261)

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The Witness: May I make a statement?

(Tr. p. 2262)

Hearing Examiner Haycraft: Yes.

The Witness: I believe testimony was given here yesterday that from time to time we used equivalent to cash, or cash, on a per case basis for floor displays in marketing

areas which we consider to be low spot areas. This may be what you are referring to.

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(Tr. p. 2269)

REDIRECT EXAMINATION

By Mr. Deveny:

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(Tr. p. 2270)

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Q. Why was the price increase in February of 1958 on your liquid bleach put into effect? A. Well, this was a combination of factors: increased marketing cost on an over-all. We had increased cost within all our manufacturing facilities, freight facilities, and so on, and for this reason we were forced to take an increase in price.

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(Tr. p. 2273)

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Salvatore Giachetti,

a witness for the Commission, resumed the stand and, having been previously duly sworn, testified further as follows:

CROSS-EXAMINATION

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(Tr. p. 2287)

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Room 1310, 226 West Jackson
Chicago, Illinois

Friday, May 16, 1958.

Met, pursuant to adjournment, at 3:00 p.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 2303)

* * * * *

Room 300
United States Customs House
Second and Chestnut Streets
Philadelphia, Pennsylvania

Tuesday, May 20, 1958

Met, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 2304)

PROCEEDINGS

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(Tr. p. 2306)

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Neil A. MacDonald

was called as a witness on behalf of the Commission, and having been duly sworn, was examined and testified as follows:

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(Tr. p. 2307)

Hearing Examiner Haycraft: What is your full name?

The Witness: Neil A. MacDonald.

* * * * *

DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. MacDonald, would you tell us what your occupation or position is? A. I am Treasurer of the Hood Chemical Company, Ardmore, Pennsylvania.

Q. What business is that company engaged in, sir? A. In manufacturing and selling household chemicals.

Q. How long have you been connected with the Company? A. Approximately 10 years.

Q. Have you been the Treasurer of the Company during all that period? A. Yes, sir.

Q. As the Treasurer of the Company, do you have access to and work with the books and records of the Company? A. I do, yes.

Q. Would that apply to the financial books and records? A. The financial books and records, yes.

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(Tr. p. 2308)

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Q. I hand you what we have marked as Commission's exhibit 472 for identification, and ask you if you will tell us what that document is, the source of the figures thereon, and how they were obtained? A. Well, this document is a record of the net sales of liquid bleach by bottle size for the years 1952 through 1957. These figures were taken from the audited annual report of the Hood Chemical Company for the respective years.

Q. Was that work done under your direction and supervision? A. This work was done under by direction.

Q. Can you tell us how accurate those figures are?

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(Tr. p. 2309)

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The Witness: Because of the way we keep our records, these figures are accurate, not to the cent, but probably to the—well, I would say a hundred dollars, in each total. They had to be arrived at by obtaining the number of cases of each size that were sold, multiplied by the average

price of that product, and they are as accurate as figures could be, taken from the records we have.

By Mr. Tincher:

Q. Now in your bookkeeping system, the way your accounts are set up, is it possible for you to have what you refer to as the exact down to the last cent figure? A. It is possible, but it is a lot of work. It could be done, but I would say it would take, for these six years, it would take me, and I think I know the records, at least 30 to 45 days.

Hearing Examiner Haycraft: You mean by that that you would have to take every invoice?

The Witness: We would have to take every invoice, yes sir.

Mr. Tincher: I offer Commission's exhibit 472, sir.

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(Tr. p. 2310)

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Hearing Examiner Haycraft: The exhibit will be received in evidence, subject to a motion to strike later, if there is any inaccuracy found. It may be received in camera.

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By Mr. Tincher:

Q. Let me hand you Commission's exhibit 473 for identification, sir, and I ask you to tell us what that is? A. This is the regular annual report of the Hood Chemical Company, Ardmore, Pennsylvania, which was prepared under my

(Tr. p. 2311)

direction, and audited by Price Waterhouse & Company.

Q. Is that a regular procedure of the Company, that was not prepared for this hearing? A. It is a regular procedure, yes.

Q. Is this annual report, has it been published annually? A. It has been published annually, yes.

Mr. Tincher: I offer Commission's exhibit 473 for identification, sir.

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(Tr. p. 2312)

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(The document referred to, having heretofore been marked Commission's exhibit 473 for identification, was received in evidence.)

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(Tr. p. 2318)

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Q. Mr. MacDonald, I hand you Commission's exhibit 479 for identification and I ask you what it is, who prepared it, and what books it was taken from? A. This document is a summary of the advertising and promotional expenditures, made by the Hood Chemical Company, Inc., during 1952 through 1957. It was prepared by myself and my assistants, from the regular annual audited records of our company's business.

Q. And are the amounts thereon for liquid bleach only, rather than all your products? A. The amounts are for liquid bleach only and do not pertain to any other product.

Mr. Tincher: I offer Commission's exhibit 479. I believe it should be in camera, as are comparable documents.

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(The document referred to, heretofore marked Commission's exhibit 479 for identification, was received in evidence and ordered to be SEALED)

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(Tr. p. 2329)

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Q. Mr. MacDonald, I will show you now Commission's Exhibit 481—and this document is in camera, so we won't talk on the record about what the actual figures are—but I notice in Section A that there is a decrease in 1957 of that cost factor over what the cost factor was in prior years, a decrease from 1953. I will ask you if there is any reason that you know of for that decrease? A. Yes, there is. There are two very good reasons. One, which we like to claim, is more efficient operation, and the

(Tr. p. 2330)

other is the fact that we moved our plant from Fullerton, Pennsylvania, to South Plainfield, New Jersey.

Q. And why did that cause a cost decrease, sir? A. Well, it shortened the haul into the New York area.

Q. Is the New York area one of your major markets? A. One of our major markets.

(Tr. p. 2331)

Q. Now, sir, I will show you Commission's Exhibit 479, once again this is an in camera document so we won't discuss actual figures but I will indicate to you that there have been a considerable number of changes by media used for advertising and I will ask you if you know the answer as to why these various changes have occurred? A. Well, I don't think anyone knows the answer, but I know the reason.

Q. And what is that, sir? A. Well, one year if you do a lot of advertising through a certain medium and you

achieve the results you expected or don't achieve them, especially if you don't achieve the results you expected you try another medium, and that is exactly what we have done. It is very evident by looking at this that in one year we spent a considerable amount of money through one medium, I happen to be looking at the newspaper now, and the next year we spent a very small percentage of that, and the same applies right through each medium. I think that's the best explanation or answer that I can give.

Q. Well, let me ask you, sir, if there is any reason why your company doesn't use all the media, rather than concentrating and switching back and forth on various single media? A. Yes. It is a question of cost. We couldn't afford to use all the media to the extent that we would get results from it. You don't get results in our business from putting an ad in

(Tr. p. 2332)

the paper and hoping that that will do from now on for six months. Our business is one that you must have continual advertising. You have to show your product in some way, talk about it this week and next week and next week, so on.

I think the same is true to most of the type of business we are in. We find it that way, anyway, and that is the reason for the fact that we didn't continue to the full extent with any one particular medium.

Q. All right, sir, thank you.

(Tr. p. 2333)

Q. Also, sir, on Commission's Exhibit 472 which is the amounts of the various cases sold and once again it is an in camera document, but I notice in recent years your company has commenced selling a pint size of liquid bleach. Will you tell us the reason for that undertaking and, well,

just tell us that first? A. Well, in certain areas we felt there was a demand for it, especially among the, what would you say, the people that can't afford to spend much money on any certain given day.

Q. And where are the pint sizes being sold, sir? A. Mostly in Florida, in fact all of them in Florida.

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(Tr. p. 2334)

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CROSS-EXAMINATION

By Mr. Royall:

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(Tr. p. 2336)

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Mr. Tincher: I would like to state now and have the record show that I have instructed the witness in preparing these documents to absolutely have no break out of private label bleaches and I would insist on any inspection of the books that that information not be made available to respondent.

Mr. Royall: Well, I would object to any such restriction, your Honor. Any information we would get would be confidential. We are trying to simplify this matter and he says he has the liquid bleach figure for both——

Mr. Tincher: He said he had it both ways, sir, in total and also in break out.

Mr. Royall: Well, we would like to examine that, your Honor.

Hearing Examiner Haycraft: That will be up to the witness. If he has no objection to showing you his private brand sales that is all right, there has been no question asked on direct which would involve or require such a disclosure.

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Neil A. MacDonald—Cross

(Tr. p. 2339)

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By Mr. Royall:

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Q. You spoke of moving your plant to Plainfield, New Jersey. When was that move made? A. It was started in July of 1957 and, of course, we had to keep in production both places, and I would say it was completed so that production was in the new plant approximately—let us say—the 10th of September. About that day. It could be a few days from that either way.

Q. Now, do your records show the size and capacity of your

(Tr. p. 2340)

old plant and your new one? A. No, I don't think it does. It is pretty hard to gauge the capacity of a plant that is manufacturing our product.

Q. Manufacturing what? A. Liquid bleach. We have never run it to capacity, so I can't give you a definite answer on it.

Q. You haven't got anything in your books that show that? A. No, we don't.

Q. You would have something in your books as to the size and some other facts about it? A. Yes, you have the machinery and the size.

Q. Now, is the Plainfield plant now the only plant you have? A. No, we have four plants.

Q. Where are they? A. One is in Jacksonville, Florida; one in Lisbon, Ohio; one in Charlotte, North Carolina; and one in South Plainfield, New Jersey.

Q. Have they also been recently built? A. Well, I don't know what you mean by recently?

Q. When was it built? A. The Jacksonville plant is

approximately seven to eight years old; the Charlotte plant is four to five; the Lisbon plant is an old plant.

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(Tr. p. 2341)

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REDIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Royall asked you on cross-examination if the price list referred to your private labels. You said No. Are your private labels higher or lower than the prices you have given us? A. They are lower.

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(Tr. p. 2344)

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Benjamin Kunin

was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Haycraft: Will you state your full name?

The Witness: Benjamin Kunin.

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DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Kunin, will you tell us what company you are affiliated with, sir? A. Hood Chemical Company.

Q. And what is your position with that company? A. General sales manager.

Q. And how long have you held that position, sir? A. Seven years.

Q. Do you know how long the Hood Chemical Company has been in existence? A. Well, no, I don't. My tenure has been since January 1,

(Tr. p. 2345)

1947.

Q. And what were you prior to the time you became "general"? A. The divisional sales manager.

Q. And what do your duties as general sales manager consist of, sir? A. Well, supervising all sales, and that is about the extent.

Q. Do you get out into the field and study market conditions and your company's products? A. Yes.

Q. What products does your company produce and sell? A. Besides bleach?

Q. Yes, sir. A. Liquid starch, ammonia, and bluing.

Q. Are all these products liquid? A. Yes.

Q. Does your company produce and sell any industrial or commercial bleach? A. No.

Q. Now, what product locations do you have for liquid bleach, sir? A. You mean distribution?

Q. No, sir, production. Where is your liquid bleach produced? A. They are produced at plants in South Plainfield, New Jersey, Charlotte, North Carolina, Jacksonville, Florida,

(Tr. p. 2346)

Lisbon, Ohio.

Q. Are all of your other products produced at these various locations also? A. Yes.

Q. Is your liquid bleach a sodium hypochlorite solution? A. Yes.

Q. Is it a 5.25 solution? A. Yes.

Q. Does your company manufacture the bleach itself? A. I can answer that—normally it is technical—but I can say Yes to that.

Q. All right, sir. Will you tell us now the sales area of your liquid bleach? A. They comprise Philadelphia,

Pittsburgh, the state of Florida, North Carolina, South Carolina,—did I mention Pittsburgh?

Q. Yes, sir.

Hearing Examiner Haycraft: You didn't mention New York City.

The Witness: Well, that is a private label operation. It has nothing to do with our brand.

Mr. Royall: What did he say?

The Witness: That is a private label operation.

Mr. Royall: Private label operation.

(Tr. p. 2347)

By Mr. Tincher:

Q. Now, in these areas that you have mentioned, sir, do you serve the rural areas between the metropolitan centers? A. No, not everywhere. The reason for that is that our advertising or promotion is—we only get support in the major markets and, therefore, they do not reach the rural areas to get the benefit of our advertising media, so that our major markets are those in the prime cities.

Q. And how does a liquid bleach producer reach the rural areas? By what media? A. By local advertising.

Q. All right, sir. Now, does your liquid bleach sell in the Southern part of the country or just selected areas? A. Well, only in the areas that I have just mentioned. And they, of course, I presume would be termed selected, such as Florida, Philadelphia, Pittsburgh, North and South Carolina.

Q. And is there any reason, sir for not selling in the entire South rather than just the Carolinas and the state of Florida? A. Well, the principal reason is, of course, that we don't have the financial means to expand into other markets. Financial means, I mean by advertising and promotional support.

A brand product must be pre-sold to the consumer and that takes considerable finance to do that so that naturally we just stay within the markets where we can support it

(Tr. p. 2348)

financially.

Q. Now, are your company's other products sold in the same general sales area as your liquid bleaches? A. Yes.

Q. What sort of a sales organization does your company have? A. Food brokers, principally, with the exception of Philadelphia where we operate direct through our own sales office.

Q. And why is it you operate direct in Philadelphia, sir? A. Well, we feel it is home ground and we can use it for a testing ground whenever we have to test promotions and we feel the broker who has many other principals to represent can't devote the time to it, so we use Philadelphia as a moving ground to sell direct and through that we are able to determine how we could proceed in other markets.

Q. And is there any reason why you use brokers in other markets rather than the direct salesmen as you do in Philadelphia? A. It is more economical. They have retail staffs to do the work and for us to hire retail men in each market with a sales representative, why, it would be uneconomical and, of course, unprofitable.

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(Tr. p. 2349)

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Q. Now, is your liquid bleach sold freight pre-paid to the customer? A. Yes.

Q. Is there any limit caused by any factor as to how far you can sell liquid bleach from your point of production?

A. Well, of course, the freight factor is very important and we try to confine our area within, well, a maximum of 250 miles. We make exeeptions in some areas where we have no relief and that is from Jacksonville to Miami, which is approximately 360 miles, we delivery. That is the exception we make where we deliver in the larger area than the 250-mile. It can be affordable to ship.

Q. And what is the reason for the exception there, sir? A. It has an old history for, well, back 50 or 60 years ago our predecessor was very fond of the Miami area and concentrated in the Miami area and developed that business to such an extent that it is desirable to keep it. And, naturally, of course, and again I am just speaking in the context of a layman when I talk about plants, naturally we can't have plants everywhere; so, since our plant has been in Jacksonville and we have that business in Miami, why, we make the exception and ship to that area.

Q. Now, what other liquid bleach producers sell liquid bleach

(Tr. p. 2350)

in the various areas where you sell? A. Of course, Clorox and Roman Cleanser. That is about it.

Q. Is that in the entire area or were you just speaking of Philadelphia? A. Yes.

Q. These other bleaches that you have mentioned, sir, are they a 5.25 sodium hypochlorite solution, too? A. Yes.

Q. Do you have a principal competitor in your liquid bleach business, sir? A. Well, Clorox is one and then in the areas, of course, there are local factors. The principal competitor in Florida would be—another principal competitor would be Roman Cleanser.

In Philadelphia it is principally Clorox and that is all.

In Pittsburgh, it is Clorox and Austin.

Q. Where is the Austin Company? A. Pittsburgh.

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(Tr. p. 2351)

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Q. Do you sit in on discussions as to what type of advertising will be used, how it will be used? A. Yes, I do.

Q. What has your company found to be the most effective media to sell liquid bleach? A. I wish I could have an answer for that. I would be a priceless consultant. We don't know. We just hope that through study and through what expenditure that we have that we strike the best medium and hope that it hits and it isn't always sure. So, we will test television one period and then

(Tr. p. 2352)

newspaper another period, and radio another period. There is no answer to that.

Q. Which medium is the most expensive for your company to use? A. Television.

Q. Has your company ever had a television program? A. No.

Q. Is there any reason for that? A. Well, it is very expensive.

Q. Let me ask you the same question with respect to radio. Have you ever had a program as distinguished from spots? A. No, and I can answer spots about radio very easily. You get more frequency than you do in, say, a 15 minute, hour or a half hour show, or you take 15 or 20 radio spots a week. You have more frequency, we think, therefore, by repeating the message more frequently. It is more apt to register. We prefer spots on radio rather than we do a show.

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Q. Now, do you advertise in any magazines? A. No, with the exception of a local magazine such as "Every Woman," and that was only done in Florida.

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(Tr. p. 2353)

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Q. Now, what methods of promotion does your company use in selling this liquid bleach? A. Well, that depends on the extenuating circumstances. We will either use a—we principally try to aim at the consumer. We do nothing to give anything to the grocer, but if we put a case on of one free with ten, we try to reflect it to the consumer or else a two cents a label off the quart bottle.

Q. And why is it that you aim at the consumer, sir, rather than the grocer directly? A. Since we are not in the position—well, the grocer is only interested in what the consumer buys. He is not concerned with a give-a-way for himself. We feel that we found in our experience that the grocer is only a factor in

(Tr. p. 2354)

in channeling your merchandise, but the consumer is the most important part of your business who purchases the merchandise; so, we aim at the consumer.

Q. Does your company give cents off on labels or coupons for reduced prices? A. We give cents off—well, we inaugurated a cents off program this year and that is two cents off on the quart size bleach, three cents off on the half label.

Q. Why was that program inaugurated, sir?

(Tr. p. 2355)

A. We felt since we are not in the position to have a multiple media advertising campaign which would comprise radio, newspaper and television, and we could only

limit ourselves, that the next best thing is to try to appeal to the consumer through a price inducement.

Now, how successful that will be we don't know, we are just trying it out now.

Q. Is that in your entire area or——. A. No, we are doing this in Florida for the present. We don't know whether we will do it here or elsewhere, but for the present we are doing it in Florida.

Q. Now, is the Hood Chemical Company, Inc., affiliated with or a subsidiary of any other corporation? A. No, not to my knowledge.

Q. And does your company own any or control any other liquid bleach producer? A. No.

Q. Now, sir, are you familiar with the price structure in retail stores in your selling areas for liquid bleach? A. Yes, they vary. Do you want specifically the price?

Q. Yes, if you could give us a general picture of the price structure. A. In Philadelphia it is 18 cents for a quart bottle, I can't tell you the half gallon, I'm not familiar with that. That is the thing that we seem to watch —the price barometer.

(Tr. p. 2356)

In Pittsburgh it's 19 cents a bottle. And in Florida it's 18 cents.

Q. Now, whose prices are these, sir? What brand? A. Hood 33 bleach.

Q. Now, what are the prices—these are all quarts I take it. A. Yes.

Q. And what are the prices in the same areas for the other liquid bleaches in the retail stores generally speaking? A. Well, you mean—well, Clorox in Philadelphia is 20 cents a quart, it's 20 cents in Pittsburgh, it's 19 cents in Florida.

Q. How about Roman Cleanser, sir? A. The Roman Cleanser is 15 cents in Florida and that's all in our area we are concerned with.

Q. Are there any other—— A. Austin Bleach in Pittsburgh is 17 cents.

Q. Are there also private label brands sold throughout your area? A. Yes.

Q. And do they sell higher or lower than these prices? A. Lower.

Q. Now, the prices that you have given us, sir, they are current prices? A. Yes.

(Tr. p. 2357)

Q. Has there been any change within the last few years in those prices with respect to the price differentials between the various brands? In other words, I don't mean are the prices still exactly the same as they were, but is the differential between the various prices approximately the same as it has been in the past? A. It's about the same.

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(Tr. p. 2359)

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Q. All right, sir; I think the pending question was whether or not your company has any cooperative advertising allowance to your customers. A. Yes, on bleach, six cents a case.

Q. And how long has that been true, sir? A. Well, we went into that about a year ago.

Q. Why are you using that particular plan, sir? A. Well, competitors have put into their policy a six cents per case cooperative allowance without proof of performance and, so, naturally, we were compelled to go along.

Benjamin Kunin—Direct

(Tr. p. 2360)

Q. Who are those competitors that you speak of, sir? A. Clorox, Roman Cleanser, and I presume Austin. I don't know.

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Q. Now, does this six cent plan require proof of advertising? A. No, it does not.

Q. Does your company make any allowances or expenditures for in-store promotions by retailers? A. No, we do not.

Q. Does your company receive any in-store promotions as a general rule? A. Not generally, but once in a while we are lucky and we get one.

Q. Excuse me, had you finished? A. By the good graces of a storekeeper who perhaps likes our salesman, but it isn't general.

Q. Now, is an in-store promotion an aid to the sale of liquid bleach? A. It certainly is.

Q. And can you tell us just briefly why that is, sir? A. Well, it receives a distinctive display and therefore it has very conspicuous attention. If they put up a 25 case display, naturally the traffic that is moving around that display

(Tr. p. 2361)

and it attracks attention and as a result if increases the sale.

Hearing Examiner Haycraft: Where are these displays usually placed?

The Witness: They call them, in the food store term it's called end displays. It's at the end of some section.

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Q. Mr. Kunin, what factors does your company consider in setting the prices it charges for its liquid bleaches?

A. Well, now, I don't know whether you are getting into my field now when you talk about setting prices.

Hearing Examiner Haycraft: Who sets the prices, let's find out first.

The Witness: The prices are set by the cost. The Cost Department gets into it and they, of course, go through the various channels of what the glass costs and the ingredients cost, and the price is arrived at. I do not set it.

By Mr. Tincher:

Q. Are you consulted at all in establishing that?

(Tr. p. 2362)

A. Yes.

Q. For what reason are you consulted? A. So that we have at least cognizance of what the market condition is and whether our price structure will have logic to put us in the competitive position with the market.

Q. All right, sir. And in that study is there a price leader in liquid bleach in your sales area? A. A price leader——

* * * * *

Q. Brand leader, excuse me, sir. A. Clorox by far dominates the bleach sales.

Q. Now, is there any chemical difference that you know of or any functional difference between your bleach and the other liquid bleaches sold in your sales area? A. Well, I wouldn't know about—I'll be specific. I wouldn't know about Clorox, but generally I would assume that there isn't any difference. The reason why I say Clorox, they have an electrolytical system and there may be a difference in Clorox.

Q. They have what, sir? A. An electrolytical—a method of producing their bleach.

(Tr. p. 2363)

There may be a difference. Whether it all adds up to 5 and a quarter and like all the rest of us I can't answer.

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(Tr. p. 2365)

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Q. What are the competitive tests in selling your household liquid bleach?

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(Tr. p. 2366)

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The Witness: That, of course, is contingent upon the advertising and the extent of the advertising that takes place in a market. Now naturally if a manufacturer can consistently advertise for 52 weeks and run a big line space in a newspaper every week at all territory levels, rural and what-not, and secondary markets, of course, that has the advantage of strengthening your market position.

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Q. Does any liquid bleach producer so advertise in your sales area? A. Clorox considerably.

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Q. Now, sir, what are the competitive tests or factors that face your company in obtaining shelf space for your products, liquid bleach?

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The Witness: Well, shelf space is predicated upon the movement of the product. If the product has a pretty good movement, you will get ample shelf space. If the product is

(Tr. p. 2367)

slow, naturally your shelf space will be proportionate to its movement.

By Mr. Tincher:

Q. In turn, sir, what determines that movement? A. The consumer, advertising getting the consumer to move it off the shelf.

Q. Can you tell us, sir, just generally speaking, if possible and if not please indicate, but generally speaking, how many brands of liquid bleach grocery stores in your sales area carry on their shelves? A. Generally?

Q. Yes. A. Well, it would be a private label, two brands. I would say generally there would be about three bleaches.

Q. And what are those, generally? A. It depends on the market. Now, Florida, I can be specific; it would be Clorox, Roman Cleanser, and 33. In Pittsburgh, it would be Clorox, Austin, and 33. In Philadelphia, it is Clorox and 33.

Now I am giving you—there are one or two others, but I don't think you could term them as being factors.

Q. And why not, sir?

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(Tr. p. 2368)

The Witness: They operate on a very limited basis.

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Q. You say they are very limited, sir. Can you give us some general idea of how limited they are, whether they are purely local or just part of a state or——

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The Witness: I will name one, Wonder Bleach, which is a little bleach operator and just sells to several agents in Philadelphia, principally private label,

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By Mr. Tincher:

Q. Have you seen their brands any place other than Philadelphia? A. You see very little of it in Philadelphia. It is down now to purely a private label operation.

Q. And what does—— A. One other organization, to be specific, is Suntex, and they recently were acquired by a new group—I don't know who they are; they are just starting. I only saw an ad in the local food paper, called the Food Trade News, where they are

(Tr. p. 2369)

contemplating advertising it and getting back into the market. That is why I couldn't give you anything on these other so-called bleach operators in Philadelphia.

Q. All right, sir. Now this class of operators we have just been talking about, where in the price structure, in the retail stores, does their bleach fit in? A. They would fit in the category of about 16 cents a quart bottle.

Q. And are their prices corresponding in the other sizes? A. Yes.

Q. Does promoting a liquid bleach, either through an off-price label or a coupon or any other way you would want to promote it, does that have any effect on the amount of shelf space or in-store promotions that the product being promoted will receive?

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The Witness: Yes, it does, because the store feels that they have some inducement to stimulate impulse sales and they will give it more space.

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(Tr. p. 2371)

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Q. Now, can you tell us, sir, approximately what percentage of your liquid bleach is sold in grocery stores?

A. I would say all of it. We have no other—are—do you mean such as department stores, drug stores and——

Q. Variety stores? A. That is about it, grocery stores, all of it.

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(Tr. p. 2374)

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Room 300
United States Customs House
Second and Chestnut Streets
Philadelphia, Pennsylvania

Wednesday, May 21, 1958

Met, pursuant to adjournment, at 10:00 o'clock a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 2375)

PROCEEDINGS

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Neil A. MasDonald

resumed the stand as a witness and, having been previously duly sworn, was further examined and testified as follows:

FURTHER CROSS EXAMINATION

By Mr. Royall:

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(Tr. p. 2376)

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Q. Now, has the company more than doubled its business since 1948?

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(Tr. p. 2377)

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A. Well, I would have to refer to figures, but I would say it has approximately doubled its figures. I would say not quite doubled.

Q. There has been an increase, your figures show, ever since 1952, has there not? A. Yes.

Q. And that's been a steady growth and an accelerated growth, has it not, sir, in that period? A. Yes, it has.

Q. I will ask you to refer to the estimates for the years '54 to '57 and ask you if the sales haven't grown 29½ percent in that three-year period.

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A. The figures are here. I presume with a quick calculation that 29 percent is approximately right.

(Tr. p. 2378)

Q. That is right, sir. And are your sales still going up relatively?

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Q. They went up to the time they have asked you about, haven't they? A. Yes, sir.

Q. Wasn't there a ten percent increase in 1956, approximately? A. Approximately ten, yes. Not quite ten.

Q. It was 9 and eight- or nine-tenths percent; something like that? A. Something like that, yes, sir.

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(Tr. p. 2379)

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Q. Has your business picked up in New York during this '52 to '57 period? A. Well——

Mr. Tincher: Mr. Examiner, I object to that on the further ground it was brought out by the testimony yesterday that the New York sales are strictly private bleach. It is not the Hood bleach.

Hearing Examiner Haycraft: Mr. Tincher, we can't close our eyes to the fact that there is on the market a number of private brands of bleaches. It has been mentioned that the firm this witness represents has sold private brand bleach. Now, I am not going to change my ruling as to going into the details of that business, the volume of business that they may be doing, but at the same time I think there should

(Tr. p. 2380)

be facts developed as to whether or not the private brand bleach business is going on. I don't think we should close our eyes to it. It is there. How much of it there is, I don't know. I think you would be in a better position to let the record show how much there is, generally speaking, than it would be to try to close it off, because it is there and it is a competitive factor in the market. You can't get away from it.

The objection is overruled. I am going to let him develop.

By Mr. Royall:

Q. Let me start and try to tie it in with what has been said.

You built a plant, I believe you testified—change of location—largely because of the increasing business in New York? A. That is right.

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(Tr. p. 2381)

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Q. Your net worth is something over a million dollars as of today? A. Yes, approximately. The figures again will show that.

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Neil A. MacDonald—Cross

(Tr. p. 2382)

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Q. In addition, Mr. MacDonald, do you at this time sell a brand of your own known as Beacon in addition to 33——

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(Tr. p. 2383)

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Q. That is not a private label is it? A. Well, it is and it isn't if such an answer is possible.

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(Tr. p. 2387)

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Q. Well, leaving that, sir—the figures you gave on total sales in the exhibit do not include private brands or Beacon, do they?

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The Witness: They do include private brands.

By Mr. Royall:

Q. These figures do include private brands? A. Yes.

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(Tr. p. 2389)

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Q. Would it in any way embarrass you, Mr. Witness, or give information you would prefer not to be known to a competitor, for me to ask you exactly the nature of the Beacon bleach and to whom it is sold? If it would, I don't want to ask you. A. No, the nature and to whom it is sold wouldn't embarrass us. It is a brand that is owned by Hood and given to various chains as a private brand.

Q. Specific chains?

Hearing Examiner Haycraft: By private brands, you mean they don't sell to any other customer in that area?

The Witness: That's right, sold to one chain in one city. It is not sold to anyone else in that location.

Hearing Examiner Haycraft: But you own the brand?

The Witness: We do.

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(Tr. p. 2392)

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By Mr. Royall:

Q. You don't spend advertising and promotion on private brands, do you? A. No, we don't.

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Q. Would it embarrass you if I asked you whether you spent

(Tr. p. 2393)

any money on Beacon for advertising alone? A. We do not.

Q. You do spend some money on Beacon, on promotion, do you not, sir, a little? A. Yes, very little. We spend some on it.

Q. But a small amount?

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(Tr. p. 2396)

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Q. Let me ask you this—maybe you know it, and maybe I should ask him. If so, don't hesitate to tell me. Do you require, in whole or in part, proof of the expenditure of that six cents? A. We do.

(Tr. p. 2397)

Q. Now, in requiring proof, as a practical matter, that results in a smaller average payment than if you did not, does it not? A. Naturally, yes.

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Neil A. MacDonald—Cross

(Tr. p. 2398)

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Q. Do you know, would it be about half as costly, one way or the other, or 40 percent? A. If my recollection is right—and this is just from memory—it is slightly in excess of half.

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(Tr. p. 2399)

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Hearing Examiner Haycraft: Does he have to submit to you proof of such advertising?

The Witness: He submits proof of the ad, a page out of the paper, or—if you wish, I can explain the conflict in our testimony.

Hearing Examiner Haycraft: Go ahead.

The Witness: We require proof, that is our policy. But no matter what your policy is, there are exceptions, and some people use it in a way that they can't send us proof. And the other testimony was correct in part, and mine is correct in part. But we require proof on the greater percentage of our advertising. The policy is to require proof, and where we don't require proof, it is a small percentage, where we have to make exceptions.

Hearing Examiner Haycraft: Well now, when you say in excess of 50 percent that you save by requiring proof, just explain that. I don't understand that.

The Witness: Well, for instance, a man will buy so

(Tr. p. 2400)

many cases and he gets six cents a case allowance to use for advertising. Perhaps he doesn't have room in his ads or for some other reason he doesn't use that; therefore we can't require proof and we don't pay him. So that the

amount we pay out of the earned advertising credits amounts to slightly in excess of 50 percent of what is potential.

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REDIRECT EXAMINATION

By Mr. Tincher:

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(Tr. p. 2402)

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Q. Now this six cents per case allowance that you mentioned, sir, is that included on Commission's exhibit 479 in the item designated as promotion? (Handing exhibit to witness.) A. No, it is designated in here. (Indicating.)

Q. Under B? A. It is in there, with the exception of the year 1955. You will notice that this is for 1955, that particular item, that year, is in here. (Indicating.)

Q. You are referring now to newspaper, for every year except 1955 and—— A. In 1955, the six cents a case is included in there.

Q. In promotion? A. That is right.

Q. Thank you. One final question, sir: Why does the Hood

(Tr. p. 2403)

Chemical Company require proof of advertising to earn the six cent allowance rather than just giving everybody six cents a case without any proof? A. Well, for economic reasons, I suppose. We can't afford to pay money for advertising and then not get a return on it. If we spend money for advertising, we want the advertising done.

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Benjamin Kunin

was recalled as a witness on behalf of the Commission, and having been previously duly sworn, was examined and testified further as follows:

CROSS-EXAMINATION

By Mr. Royall:

Q. Mr. Kunin, you testified as to certain competitors of 33. Is Texise a competitor? A. Yes, sir.

Hearing Examiner Haycraft: Where is it? It doesn't do my much good if he doesn't say where it is.

The Witness: Greenville, South Carolina.

(Tr. p. 2404)

By Mr. Royall:

Q. Thrifty Bleach, which has recently entered the market in Philadelphia, is that a competitor? A. Potentially, they are.

Q. Do you sell in Savannah? A. No, sir.

Q. Have you tried to sell in Savannah? A. We did.

Q. Is Clo-White the principal factor there? A. Yes.

Q. Who makes that? A. Coastal Chemical Company.

Q. Do you do business in Baltimore? I don't believe you mentioned that, but I am curious. A. Yes, we do.

Q. Do you know whether the manufacture by one company of liquid bleach, liquid starch, ammonia and liquid bluing, as you manufacture it, is a normal grouping, following by a large part of the bleach industry? A. Yes.

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(Tr. p. 2405)

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Q. I believe that you testified Clorox is, over-all, the largest manufacturer of bleach, is that right, sir, that

Clorox is the largest? A. I don't recall saying that. I know they are, but I don't recall saying that.

Q. I thought he asked you that. When you said Clorox dominated, you meant the largest quantity, didn't you? A. That is right.

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(Tr. p. 2409)

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Q. Now, you said something yesterday in answer to questions

(Tr. p. 2410)

of the complainant about Roman Cleanser coming into Florida. When was this? A. Well, approximately four years ago.

Q. Four years ago. And now when they came in, did they put on various advertising and promotion plans? A. Yes, they did.

* * * * *

Q. And their competition got keener and keener, didn't it? A. Yes, it did.

Q. And after it became keen, you put on some price-off plans, didn't you? A. That is exactly right.

Q. Did you also give some free goods? A. No, when we—that has supplanted the free goods. We

(Tr. p. 2411)

thought we would try one-free-with-ten to combat. That didn't work; so, we gave a two cents off label.

Q. I understand. I didn't mean they were done simultaneously. You did one and then the other. A. That is right.

Q. And you considered that the normal way to meet that situation, didn't you? A. As far as were were concerned.

Q. You have used those same plans in other places where those situations arose? A. We haven't done that.

Q. Did you use some in Baltimore, to remind you? A. We had in Baltimore a free goods deal. Are you speaking specifically of something or just promotion? Up to two cents?

Q. In Baltimore I am speaking of a one-for-ten. A. Right; that is right.

Q. And in Cleveland did you have a concession to meet competition that enabled them to sell 33 Bleach for 13 cents a quart for a while and 28 cents a gallon? A. We don't market "33" in Cleveland.

Q. What? A. We don't market "33" in Cleveland.

Q. What do you market there? A. We have Beacon.

Q. Beacon?

(Tr. p. 2412)

A. Beacon.

Q. Yes, sir. But there was a price reduction in August of '57 in Cleveland or around that time, wasn't there? A. I don't know whether to call it a price reduction. Our Beacon line is a secondary line; therefore, we have no promotion or anything connected with it; so, we pass the advantage on price.

* * * * *

Q. Do you recall that there was a period in 1955 and '56, to be exact, from October 1955 to April 1956, when "33" and Clorox sold at the same price?

Mr. Tincher: Is that retail?

(Tr. p. 2413)

By Mr. Royall:

Q. Sold by you at the same price? A. Both of us. You mean they were $1.75 and we were the same. To the

wholesaler. Are you talking about to the wholesaler or to the shelf level?

Q. What you got for it. A. When was that?

Q. Maybe this will refresh your recollection (showing document to the witness). A. That is correct.

Q. That is correct? A. Yes, sir.

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Q. I believe that was the same as to half gallons and other sizes, wasn't it? A. Correct.

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REDIRECT EXAMINATION

By Mr. Tincher:

Q. Now, you say you do not sell in Savannah, Georgia, and have not?

(Tr. p. 2414)

A. That is right.

Q. And that is where Clo-White is? A. That is right.

Q. Why haven't you sold in Savannah? A. First of all, we have a disadvantage from shipping from our Jacksonville plant and, therefore, it wouldn't be affordable to be in that market.

Hearing Examiner Haycraft: Where is the Clo-White?

The Witness: Savannah.

Hearing Examiner Haycraft: You would have to absorb the freight?

The Witness: Yes, sir.

By Mr. Tincher:

Q. What is the basis of your statement, sir, that Clo-White is the principal competitor or competition in Savannah? A. You mean in Savannah?

Q. Yes, sir. A. That is public record. Public record by surveys, newspaper surveys, and that they do have the prime market in Savannah. That is my basis, by surveys.

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(Tr. p. 2415)

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Q. I see. Now, sir, you said, if I recall correctly, the question was something about whether it was normal for liquid bleach producers to produce ammonia and starch—was there another one, bluing? A. Bluing.

Q. Now, will you tell us what liquid bleach producers produce these four products? A. What I meant by normally is that those in the field like we are and it is kindred to what they do, bleach launders and cleans laundry and starch starches laundry, they are kindred, therefore, it would be more normal for them to be in that business. Now, we have one in Pittsburgh which is Austin; we have one in Philadelphia which is Thrifty. I only know what is within our sphere. Texise is another one.

Q. All these companies that you mentioned are producing all these products in liquid form in bottles, are they not? A. Yes.

Q. And that entire bottling operation can be conducted at one bottling plant, can it not? A. Yes, it can.

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(Tr. p. 2416)

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Q. Now, you testified about various promotions of the Roman Cleanser Company when they came into Florida approximately four years ago, and you testified about various promotions of your own company. Will you tell us, sir, why your own company has engaged in these pro-

motions? A. Well, we were compelled to. Roman Cleanser came into the market and to get in, of course, they offered all sorts of inducements—low prices, sampling, and other merchandising devices, cooperative advertising far above the average—and we stood aside for a couple of years thinking that, well, we had the market well entrenched and, therefore, we wouldn't be too vulnerable. Well, we were mistaken. So, after about two years of getting a good rubbing, we finally became aroused and combatted it. That is the reason for our countering with our promotions.

Q. All right, sir. For how long a period did you counter with your promotions? A. We don't sustain it. This year will be the longest one. We are on a 60-day basis this year. In the past we would do it maybe just what we—in our jargon, I would say a one-shot deal. Normally a one-shot deal will run about anywhere from two weeks to 30 days.

Q. And why is this limitation, sir, if there is any reason? A. It is pure cost. I wish we had made some nice profit

(Tr. p. 2417)

on it and I would like to have it on for a year.

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(Tr. p. 2419)

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Q. My question is, what did you mean in that answer when you said that competition was keen? A. Let me see if my answer is correct. They resorted to low prices and free distribution in stores, in chain stores, and sampling house to house, coupon. I think that is pretty keen.

Q. Well, that is what I am trying to find out. What does "keen" mean? Does "keen" mean it is easier or

harder to compete? A. Much tougher to compete against such competition, where you have give-a-ways, all the tools at every level. The

(Tr. p. 2420)

housewife, advertising and in-store.

Q. Was this Roman Cleanser campaign tied in with any other product? A. No, just bleach.

* * * * *

Hearing Examiner Haycraft: Are there any of those big manufacturers located in Miami?

The Witness: One.

(Tr. p. 2421)

Hearing Examiner Haycraft: Does it have a factory?

The Witness: Yes. Roman Cleanser just acquired one.

Hearing Examiner Haycraft: Just now?

The Witness: Just acquired one.

* * * * *

Mr. Tincher: There is one final thing before these witnesses leave, sir. I understand that we can stipulate that Commission's Exhibit 472, which reads "Total Net Sales of Liquid Bleach for Each Bottle Size, 1952 through 1957," that what is actually reflected is the fiscal years of the company for each of those years with the period in each case ending on August 31st, rather than December 31st.

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(Tr. p. 2436)

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Room 511-A
United States Court House
Foley Square
New York, New York

May 26, 1958

Met, pursuant to notice, at 10:20 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2437)

PROCEEDINGS

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(Tr. p. 2439)

* * * * *

Alfred Olkin

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

(Tr. p. 2440)

Hearing Examiner Haycraft: Give me your full name and address, please.

The Witness: Alfred Olkin, 850 Raleigh Lane.

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DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Olkin, what is your occupation, sir? A. I am a secretary and treasurer of the Rose-Lux Chemical Company.

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Q. How long have you held that position? A. I have been treasurer since 1940 and secretary for about ten years.

Q. How long has your company been in business? A. Since 1933.

Q. What is the business activity of your company and what products does it have? A. We manufacture a

line of household laundry products including bleach, ammonia, liquid starch, and so forth, that is sold through the grocery trade.

Q. Are these products all liquids?

(Tr. p. 2441)

A. All liquids, yes.

* * * * *

Q. Is your company a public corporation or a family type corporation? A. I would say a closely held corporation.

Q. How many stockholders are there? A. Just two.

Q. Who is the other stockholder? A. Mr. David Rosenberg.

Q. What is his position with the corporation? A. He is the President.

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(Tr. p. 2442)

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Q. Mr. Olkin, I hand you Commission's Exhibit 483 for identification and ask you to tell us what the figures thereon represent, who it was prepared by, and how it was prepared? A. They were prepared by me. They represent the sales of bleach from the year 1952 through 1957, and I arrived at my figure by figuring out the percentage of bleach shipments as against the others and took that percentage of our total sales.

Q. Will you tell us why you used that——

Mr. Royall: (Interposing) Wait a minute. Let me hear that last answer. Will you talk a little louder?

(Tr. p. 2443)

A. I said I figured the bleach shipments, what percentage they were of our total shipments of all products and applied that percentage to our sales figure for all products.

We don't keep separate records of each individual product that we sell.

By Mr. Tincher:

Q. Is there any other way that you have of computing your sales of liquid bleach or any other single product you have? A. You would have to follow the same pattern.

Q. Did you do that for each of the years involved there? A. I drew an average percentage for the six years involved.

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Mr. Tincher: As I understand, he has a six-year percentage and he has taken an average of all six years and applied to each individual year for the total of that year, for the sales for that year.

Hearing Examiner Haycraft: Is that correct?

The Witness: Yes.

Hearing Examiner Haycraft: I didn't understand you to say that. I thought you made your estimate for each year.

The Witness: Well, for the sake of argument, if

(Tr. p. 2444)

in '52 it was——

Mr. Royall: (Interposing) Objection. Objection to his statement, your Honor.

Hearing Examiner Haycraft: Overruled. He can make an explanation of how he figured it.

The Witness: If in 1952 it averaged, say for the sake of argument, 56 per cent and in 1953 it was 55 and in '54, it might have been 54, I averaged the whole thing up. I took the average of each year, divided it by six.

Hearing Examiner Haycraft: What is the figure, from that you multiplied out to find out for the total—how did you figure for each year?

The Witness: I took the gross sales for each year of all our products and multiplied it by this percentage figure.

Hearing Examiner Haycraft: Which was an average, rather than exact?

The Witness: It was—the variation was very slight. It wasn't more than one per cent in any one year.

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(Tr. p. 2446)

Mr. Tincher: I wonder if you could take my pen and write on the document and initial it what percentage of total sales these sales represent, and this document is in camera?

The Witness: Yes, sir, I can do that.

By Mr. Tincher:

Q. Did you initial it, sir? A. Yes.

Q. Now that you have written down that figure, in any one of these six years, or during each of these six years, what was the greatest variation from that average figure which you have? A. One percent.

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Mr. Tincher: I offer Commission's Exhibit 483 for identification at this time, sir.

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(Tr. p. 2447)

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(The document referred to, heretofore marked for identification Commission's Exhibit 483, was received in evidence, in camera.)

* * * * *

Q. Is the liquid bleach as produced by your concern a household or an industrial type? A. Household.

Q. Where is your liquid bleach produced? A. At a plant at 301 Belmont Avenue, Brooklyn.

Q. Do you have more than one production plant? A. No.

(Tr. p. 2448)

Q. Are all of your products produced at the same plant where the liquid bleach is? A. That's right.

Q. Would you tell us, sir, the sales area for your liquid bleach? A. Well, it's what is known as metropolitan New York.

Q. How far out does that reach, sir, as you experience it? A. That would take in the five boroughs, Westchester County, Bergen County in New Jersey and Fairfield County in Connecticut.

Q. Do you have the same sales area for your other products? A. Yes.

Q. Is your liquid bleach sold to the same customers under the same outlets as your other products? A. Yes.

Q. Is your liquid bleach advertised? A. Yes.

Q. What media do you use in advertising it? A. We use newspapers, trade papers, radio and television.

Q. What type of advertising have you found most effective to advertise liquid bleach? A. It's very hard to say. I guess television would be about the most effective one, if we could afford to pay for prime time——

Hearing Examiner Haycraft: (Interposing) Pay for

(Tr. p. 2449)

what?

The Witness: What they call prime time on television, which is from seven to ten o'clock in the evening. The rates are so high that we can't afford to buy it. So ours are daily time programs.

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By Mr. Tincher:

Q. Do you have any promotions for your liquid bleach, and by that I mean any special type of price reducing or coupons or anything that will reach the housewife? A. We never did any couponing and the only type of promotion we at times use is that we will have a two cent off per bottle on the label.

Q. How long does that type of activity—— A. (Interposing) We generally run that anywheres from four to five weeks.

Q. Is there any reason for the selection of that particular time period? A. No. We generally do it when business becomes dull and we want to give it a shot in the arm.

Q. Does that type of activity increase the sale of your liquid bleach? A. It does.

(Tr. p. 2450)

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Q. Do you grant your liquid bleach customers discounts for quantity purchases? A. No.

Q. Do you have any cooperative advertising allowance for your liquid bleach? A. No.

Q. Do you use such allowance on your other products?

(Tr. p. 2451)

A. No.

* * * * *

Q. What are the competitive tests that you must face in selling your liquid bleach?

* * * * *

A. Well, in order to sell our liquid bleach, we have got to be under the price of a bleach like Clorox because they are so extensively advertised and, consequently, so popular and very well known that if the price on our bleach was to

be the same as theirs, I don't think any housewife would bother to pick ours up, so we have to manage to keep under their retail price. Also, we've got to be under the price to the grocery buyer and we have got to afford him a little better mark-up percentage-wise than he gets on Clorox to induce him to handle

(Tr. p. 2452)

it.

* * * * *

Q. In selling your liquid bleach, do you encounter any difficulty in obtaining shelf space? A. That's one of the main difficulties today because the grocery store will give the most shelf space to the item of which they sell the most and, consequently, bleach, in particular Clorox, will receive the largest amount of space, whereas ours being the cheapest outside of the private label, receive the least amount of space and we found that quite a handicap in our business.

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(Tr. p. 2453)

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Q. What do you as a liquid bleach producer do in an effort to obtain shelf space?

* * * * *

A. Well, as I said before, we afford the grocer a better mark-up percentage-wise to induce him to display our merchandise and sell it, and we run this two cents off per bottle, which is marked on the label once in a while and we hope that he will believe that he will sell more and consequently give us another row or two on a shelf.

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(Tr. p. 2457)

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Q. I will hand you Commission's Exhibits 485 and 486, both for identification, and ask you to tell us what these are and how they were used and who they were sent to? A. This is a form letter that we sent out to our customers, notifying them of an increase in price due to increase in the cost of bottles, caps, labels and other factors entering into the manufacture of our product.

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(Tr. p. 2458)

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Q. Is your company's liquid bleach a sodium hypochlorite solution? A. Yes, sir.

Q. What per cent of the solution is that? A. 5 and a quarter.

Q. What is the remainder of the product? A. The remainder we term inert ingredients.

Q. I wonder if that means water, sir? A. More or less.

Q. Who else, when I say who else, I mean what other producers sell liquid bleach in the same sales area that you have for your liquid bleach?

(Tr. p. 2459)

A. We have, of course, the Clorox Company. There there is Dazzle.

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A. There there is a Bonnie bleach. There is a Cleano and, of course, the chain store private labels.

Q. Who makes the Dazzle product, if you know? A. Prescott Company in Passaic, New Jersey.

Q. Do you know who makes the Cleano and the other type? A. The Bonnie is made by General Products Company, or the Bonnie Bleach Company. I don't know what they call themselves. And Cleano is—I don't know

the name of their firm. They are somewheres in the Bronx.

Q. Do you meet much competition from all these bleaches or just how is the competition spread around as your company has found it? A. Well, our keenest competition has been Clorox. The others are concentrated in certain neighborhoods. Like, for instance, Cleano does the bulk of their business in the Italian neighborhoods and they are known more or less like the Italian traders. Also an outfit called—I can't think of their name. But they also deal, I'd say 85, 90% of their business was in the Italian trade. When it comes to the all-over picture, the competition that we feel is Clorox.

Q. Are you familiar with the labels of the various bleaches

(Tr. p. 2460)

that you have mentioned in the Metropolitan area? A. Oh, yes. I'd recognize them if I saw them.

Q. Are the other bleaches in the area also a five and a quarter per cent sodium hypochlorite solution?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Sustained.

By Mr. Tincher:

Q. Let me ask you of your own personal knowledge if there is any difference between the bleach your company manufactures and the other bleaches sold in this area?

Hearing Examiner Haycraft: You haven't laid any foundation for that. You can't prove it quite that easy.

Mr. Tincher: I am not seeking to prove quality, sir, and exact——

Hearing Examiner Haycraft: (Interposing) You can't prove that these other bleaches are the same as his without showing that he made some chemical analysis. If he has made a chemical analysis——

Mr. Royall: (Interposing) Your Honor, if they will give us the names of the bleaches, we might stipulate——

Hearing Examiner Haycraft: He has given you the names.

Mr. Royall: No, not all of them. If he gave us the names of all the bleaches, agree on the names of all the bleaches sold here, we might stipulate on those that we think

(Tr. p. 2461)

are the same, but we wouldn't agree to the evidence offered now. We have object to it.

* * * * *

Q. What percentage of your company's liquid bleach is sold in grocery stores, sir? A. Practically a hundred per cent.

Q. Do you have any idea what per cent of your company's liquid bleach sales are sold in chain stores as contrasted to independent stores? A. It would be about 60%.

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Q. Would you explain to us as briefly as possible how your company distributes its liquid bleaches? In other words,

(Tr. p. 2462)

how you get it from your plant to your customer? A. Well, we hire trucks to deliver it.

Hearing Examiner Haycraft: How do you get the order?

The Witness: We employ salesmen and brokers.

By Mr. Tincher:

Q. They take the orders? A. They solicit the orders. They send the orders into our office and it's then—our

office and our plant are in the same building and it's then shipped from the plant by truck to the various warehouses as designated on the order.

Q. Does your company pay the trucking charges involved in these shipments? A. Yes, we do.

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(Tr. p. 2465)

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Q. Can you tell us, sir, in the advertising that you do have your liquid bleaches, is your advertising sufficiently large enough for you to receive any discount rates?

(Tr. p. 2466)

A. No.

Q. Do you have any radio or TV programs as distinguished from just a spot announcement? A. Just a spot. No programs.

Q. Does your company use any banners or pennants or window bolsters for the sale of its products? A. No, we do not.

Q. Does your company have any special promotions in the fall or in the spring for the liquid bleach product? A. No. We don't.

Q. In this area that you sell in, in what section of the grocery store are liquid bleaches generally found? A. Well, as a rule, they are on the bottom shelf, I'd say in the least prominent part of the store.

Q. Well, is there a name to the section they are in? A. It's in a section called soaps, detergents and et cetera.

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(Tr. p. 2467)

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Q. Now, from 1952 up to the present time, sir, has your company considered expanding its sales territory beyond

the Metropolitan New York area? A. Yes. We have gone into it a number of times, but we have always found it impractical due to the cost of trucking or freight of our product. It's packed in glass which makes it heavy. Due to the fact it's packed in glass, it takes a pretty high freight rate, and we just couldn't compete with any local product unless you wanted to go in and saturate the market with advertising, which we felt we couldn't afford to do.

Q. When you mentioned that because it's glass, you have to pay a high freight, would you explain what the situation is on that? Why you have to pay a high freight cost because it's glass? A. Because, it is seldom that you ship a carload of glass bottles containing anything, that the railroad company doesn't get a claim for damage because there is bound to be some breakage. Of course, the railroad companies would know best why they want more for glass.

Q. Are you familiar, sir, with the prices on retail grocery shelves of liquid bleaches in your sales area? A. Yes, I am.

(Tr. p. 2468)

Q. Could you give us as briefly as possible, a general idea of what the various brands of liquid bleach sell for on the retail shelves? A. Of course, they do vary from store to store, but the popular price for Clorox at the present time is 19 cents a bottle. For the quart size. Dazzle is the same price, 19 cents. Ours sells for 17 cents. I haven't come across the other two brands mentioned as Cleano because they are in very few sections. They are not wide spread over the city. I really don't know what they retail for.

Hearing Examiner Haycraft: How about the private brands?

The Witness: The private brands retail for 15.

By Mr. Tincher:

Q. Now, this price set up that you have given us on the quart, sir, proportionately speaking, does the same situation prevail on the half gallons and the gallons and the pints? A. When it comes to the half gallons, the difference on the price would be practically twice what it is on the quart. It is a bigger package and it is only packed six bottles to a carton, whereas the quarts are packed twelve.

When it comes to the gallons, the price in money would be still higher because they only come four to a carton, and they are selling the woman four quarts. So that for the sake of argument, the difference between our price and Clorox's

(Tr. p. 2469)

price on the quarts is 2 cents. It would be approximately 4 cents on the half gallons and it might be 6 or 7 cents on the gallons.

Q. Is your company producing liquid bleach at full capacity? A. No, we are not.

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Q. Can you tell us, sir, what per cent of your capacity you are producing at? A. Well, it's something I never tried to figure out before, but we only run one shift, that is, an 8-hour day, whereas we could run sixteen hours. You could even run all around the clock on the same machinery. We don't even run our equipment for a full forty hours. We probably may run it for 25 or 30 hours during the week.

Q. Have the costs to your company of producing and selling liquid bleach increased since 1952? A. Oh, yes. It's gone up quite a bit.

Q. Have all of these costs been passed on to the customer by your company?

(Tr. p. 2470)

A. No. Not all. We were compelled to absorb some of them because we could only raise our price if Clorox raised theirs. I don't think anybody in our business would have the nerve to raise the price unless Clorox did.

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Q. Mr. Olkin, are you familiar with the fact that on or about August 1, 1957, the Procter & Gamble Company of Cincinnati purchased the Clorox Chemical Company? A. Yes, sir, I am.

Q. Are you familiar with the product line and the activities of the Procter & Gamble Company? A. To a great extent.

Q. What effect, if any, will the acquisition by Procter & Gamble of Clorox Chemical have on the business of Rose-Lux Corporation?

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(Tr. p. 2471)

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A. Well, it's bound to hurt our business and it's bound to decrease our sales.

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(Tr. p. 2475)

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Alfred Olkin

resumed the stand and testified further as follows:

CROSS EXAMINATION

By Mr. Royall:

Q. Mr. Olkin, previously, this morning, you gave figures, which are in the record subject to possible motion to strike.

They did not include private brands, did they, private labels? A. The figures?

Q. The figures you gave did not include private labels? A. They did include private labels.

Q. The figures you gave this morning? A. Yes.

Q. How much? I don't want you to give any figures that are secret, but can you give us what part of that was private label?

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(Tr. p. 2476)

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A. I'd say approximately 5%.

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(Tr. p. 2477)

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Q. I hand you a list of what purports to be 17 private label bleaches sold in your area and ask you if this list directly represents private label bleaches sold in your area?

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(Tr. p. 2478)

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Hearing Examiner Haycraft: Refreshing your recollection from the exhibit which he handed you, you may testify as to the private brand that you are familiar with and where they are sold and by whom.

A. The associated label is sold in Metropolitan New York. United is sold in Metropolitan New York. Grisdale is sold, their stores are confined to Bronx and Manhattan. Hill

(Tr. p. 2479)

Bright is out in, mostly in Nassau County, Long Island. Kings is sold in Northern New Jersey. Plus is handled

by a jobber. I don't know just exactly how far it gets around. White Dove is sold by Grand Union, and they have stores all through Metropolitan New York. Seamon Brothers' So White is also a jobber. I don't know how far they get around. Bright Sail, they are all throughout the area. Sally Shopwell, they are concentrated mostly in Long Island and the Bronx and in Manhattan. Key Food Stores is a cooperative. I think they have, their members are in Brooklyn and Long Island.

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(Tr. p. 2483)

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Q. Mr. Olkin, in addition to the promotions that you outlined this morning, is it true that during the spring of 1957 that you had a plan where in the case of purchase of two separate, one-hundred-case shipments from you, that you gave a transistor radio or 8 millimeter camera? A. That's a promotion we had with the independent retail stores and some of the others, provided they took 200 cases of goods in one delivery.

(Tr. p. 2484)

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Q. Did you in the spring of '57 also give a $50 premium certificate to the winning Bohack manager? A. Yes, that's true.

Q. Did you in that same general period give varying premiums to managers who sold from 25 up to 150 cases? A. From 30 up.

Q. 30 up to 150 cases? A. Yes.

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(Tr. p. 2486)

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Q. Mr. Olkin, I believe you testified this morning that you had no discount system, is that correct? A. That's right.

Q. Is it not a fact that in the case of a small grocer buying a small volume, say 25 cases or less, that you charge him an added amount per case? A. No. The basic price is the price that the small grocer pays. Then the only thing we have is it's expensive to handle shipments under 25 cases so that we permit a nickel a case off the regular price for anybody that takes 25 cases in one delivery.

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(Tr. p. 2487)

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Q. Your company started with a paid-in capital of only a few hundred dollars, didn't they?

Mr. Tincher: I object to that, sir.

Hearing Examiner Haycraft: Sustained.

By Mr. Royall:

Q. And it is now worth over $400,000?

Hearing Examiner Haycraft: I will let him answer that question.

By Mr, Royall:

Q. It is now worth over $400,000? A. That's right.

Q. And a good deal more than 400,000, isn't it? A. That all depends on your interpretation of a good deal.

Q. How much is it worth?

* * * * *

A. I don't care to divulge exactly what our company is worth.

Q. Is it worth a million dollars? A. I said I don't care to divulge what it's worth.

Q. Is it worth two million dollars?

(Tr. p. 2488)

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A. No, it's not worth two million dollars.

Hearing Examiner Haycraft: Somewhere between 400,000 and two million.

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(Tr. p. 2503)

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Room 511-A
United States Court House
Foley Square
New York, New York

May 27, 1958

Met, pursuant to adjournment, at 9:45 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2504)

PROCEEDINGS

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(Tr. p. 2510)

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Vincent Rinaldi

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

(Tr. p. 2511)

Hearing Examiner Haycraft: Give me your full name and address?

The Witness: Vincent Rinaldi.

* * * * *

DIRECT EXAMINATION

By Mr. Deveny:

Q. Mr. Rinaldi, could you tell us what company you are connected with? A. I am connected with the No-Worry Chemical Company.

Q. What is your position in that company, sir? A. I am president.

Q. What business is the company engaged in? A. We make bleach.

Q. Do you make any other products, other than bleach? A. No, sir. We buy other products.

Q. The other products that you buy, sir, what are they? A. We buy the ammonia and liquid starch. We get that packed.

Q. Could you tell us, sir, approximately how much of your business is liquid bleach? A. It's about 2500 to 3000 cases a month.

Q. About how much of your business would be the starch and ammonia sales? A. Ammonia sales, say about 300 cases a month.

Q. Do you have any industrial bleach?

(Tr. p. 2512)

A. No.

Q. Any industrial or commercial bleach? A. No.

Q. Where do you manufacture your bleach? A. 4143 Manufacturer's Place, Newark.

Q. Is that the only place? A. That's the only place

Q. What area do you sell your bleach in? A. Essex County and Hudson County.

Q. Of New Jersey? A. New Jersey.

Q. Is that true for your other products as well as the bleach sales? A. Yes, sir.

Q. Do you sell all of your products to the same customers? A. Yes, sir.

Q. How do you sell your bleach? Is that by—what method of sales do you use? A. We go to the retail stores and we sell.

Q. Do you have salesmen? A. Yes, sir. We have a salesman out and he goes out and gets the order and we deliver it.

Q. You use your own delivery methods. A. Yes, sir. We use our own truck.

Q. How many salesmen do you have?

(Tr. p. 2513)

A. I have two.

Q. Do you advertise your liquid bleach? A. No, sir.

Q. Why don't you advertise? A. Can't afford it.

* * * * *

Q. Do you promote your liquid bleach by any means, any kind of offers——

Hearing Examiner Haycraft: (Interposing) You mean promote the sale?

Mr. Deveny: Promote the sales, yes, sir.

A. Yes, we do sometimes.

By Mr. Deveny:

Q. What would that be? A. Well, we give them a deal, one free with ten.

Q. Do you do anything else other than that? A. That's all.

Q. Why do you give the one free with ten? A. Well, the other competitors do the same thing so we have to follow suit.

Q. Do you have any quantity discount on your bleach to your customers?

(Tr. p. 2514)

A. No.

Q. Do you have any advertising allowance on your liquid bleach? A. No, sir.

Q. Why is that, sir? A. Because we can't afford it because if we give them one free with ten, we can't give them any more.

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Q. What competitive factor determines whether you sell your bleach to your customers or not

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A. I don't get you.

Hearing Examiner Haycraft: What he means is, what do you have to do to sell? In other words, do you meet the price of your competitor, do you sell below, do you sell above?

The Witness: Yes, we have to meet the price if we want to get into the stores.

By Mr. Deveny:

(Tr. p. 2515)

Q. Whose price do you have to meet? A. We have to meet Rose-X and sometimes we have to meet in with Dazzle.

Q. When you say you have to meet it, does that mean you have to go above it, right at it, or below it? A. Some of them will take it from us if we meet the price. If we meet the price, they will take it from us.

Q. Are you ever prices higher than Rose-X? A. No. Just five cents less. They just raised theirs and we didn't know it.

Q. Where is your price in relation to Dazzle? A. Well, ours is $1.55 and theirs is about $1.80.

Q. How about Clorox? A. Clorox is about $1.90, $1.90.

Hearing Examiner Haycraft: For what size?

The Witness: I am only speaking for quarts. I wouldn't know about the others.

Hearing Examiner Haycraft: That's a case?

The Witness: A case, yes, sir.

By Mr. Deveny:

Q. Do you produce a dry or a powdered bleach? A. No, sir.

Q. Can you give us an idea, sir, how much your freight would cost you, how much your delivery charge would be per case? Do you have an idea?

(Tr. p. 2516)

A. It costs about ten cents a case.

Q. Does that limit your sales area by any area? In other words, does that put a limit on your sales territory? A. Yes. Just the metropolitan area.

Hearing Examiner Haycraft: Metropolitan what, Newark?

The Witness: Even in New York too, if we had business.

Q. Do you sell in New York? A. No, sir.

Q. What's your brand name, sir, that you sell the bleach under? A. No-Worry. No-Worry Bleach.

Q. What's the brand name for the ammonia and starch? A. The same, No-Worry.

Q. What is the composition of your bleach, what is it made out of? A. Chlorine and caustic.

Q. Would that be what is referred to as sodium hypochlorite? A. We make five and a quarter.

Q. Does your bleach have anything unique about it or any special quality that other bleaches might not have?

A. Well, we have different words on them, different direction how to use it.

Q. I mean the bleach itself, what's in the bottle?

(Tr. p. 2517)

A. Liquid chlorine—I call it bleach, you know. Sodium hypochlorite.

Q. Is that any different from any of your competitor's bleaches? A. Not that I think so. The same thing.

Q. Could you tell us, sir, what type of customers, what type of stores do you sell to? A. I sell to independent stores.

Q. Do you sell to any chains? A. Just one. Acme Stores in Carney, New Jersey.

Q. Have you tried to sell to other chains, other than Acme? A. Yes, sir.

Q. What were the results?

* * * * *

A. They don't want to handle ours. They said they got Clorox; they got their own; they got Dazzle. They have no room for me.

By Mr. Deveny:

Q. Tell me, sir, how much approximately do you sell to the Acme store in Carney, do you have an idea? A. About 250 a week.

Q. Would that be dollars or cases? A. No, 250 cases a week.

Q. Would the balance of your sales be to these other stores? A. The independent stores, yes.

(Tr. p. 2518)

Q. Do you have a principal competitor in your sales area of bleach? A. Well, we have this private brand that they are pushing around.

Q. Other than the private brand, is there any other principal competitor of yours? A. No.

Q. Who are some of the companies you compete with, some of the brands? A. Some of the brands? Dazzle and Clorox.

* * * * *

Q. Is your price on your bleach a delivered price? A. Yes, sir.

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(Tr. p. 2522)

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Q. Do you attempt to get grocery shelf space for your bleach? A. Yes.

Q. How do you attempt to get that, sir? A. I just can't get it. I am trying to get it, get the big stores. I only got the small stores. That's the only shelf I got.

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(Tr. p. 2523)

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Mr. Deveny: We are looking at the general market situation.

Hearing Examiner Haycraft: Yes, but the market situation I am interested in is the market situation from the time of the acquisition, and he has testified to that. It's not going to help us decide whether the violation of law going on according to this acquisition is to have a witness say back many years ago he used to sell to these other stores and now he doesn't. What kind of a finding do you want me to make on that?

Mr. Deveny: Well, your Honor, to answer your question, this gets back to our basic contention that we are entitled to look at the market prior to the acquisition and subsequent to the acquisition. I am just trying to get some

market information prior to the acquisition with this question.

By Mr. Deveny:

(Tr. p. 2524)

Q. Mr. Rinaldi, does advertising and promotion of bleach have any effect upon the sales of it? A. Yes, sir.

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(Tr. p. 2527)

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Q. Have you ever considered expanding your sales territory? A. I tried to.

Q. What would that involve? A. That involved money.

Q. Have you expanded? A. No, sir.

Hearing Examiner Haycraft: You mean you sold in the same area all these years, never changed any?

The Witness: That's right.

By Mr. Deveny:

(Tr. p. 2528)

Q. Do you have any printed forms or any mimeographed letters that show the prices of your bleach by case? A. No.

Q. Do you know the prices yourself? A. Yes, sir.

Q. I think you have told us the quart price? A. Yes.

Q. Could you tell us the gallon and the half-gallon—— A. (Interposing) Do you want to know the price?

Q. Yes. A. Quarts, $1.55; half-gallons, $1.50; gallons, $1.60; and liquid starch, $1.80.

Q. No, sir. We just want the liquid bleach. A. All right.

Q. Do you have any idea how your retail price on the shelf compares with Clorox, Dazzle, Rose-X and private

labels? A. Private labels are much cheaper, but Clorox and Dazzle are a little higher than me on the prices.

Q. On your quarts, sir, do you have an idea what the retail price of you—— A. (Interposing) They sell around 18 cents.

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(Tr. p. 2529)

Q. Well, let me ask you this, sir. Are your producing bleach every day? A. No, sir.

Q. Do you have an idea of about how many days a week you would be producing? A. Well, I produce about two or three times a week. That's all.

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(Tr. p. 2530)

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Q. How long has your company been producing liquid bleaches? A. About 35 years.

Q. Let me ask you this, sir. From 1952 through the date, now, what's been your sales picture? Has it been up, down, or—— A. (Interposing) No, it's been going down all the time.

Q. Are you familiar with the fact, sir, that Procter & Gamble Company acquired the Clorox Chemical Company? A. Yes, sir.

Q. What effect will that have on your business?

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A. Well, I don't think—if they are going to go out and put deals on, I don't think we are going to last any longer than we have lasted now.

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(Tr. p. 2531)

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Q. Before Clorox was bought by P & G, was there competition based on any deals?

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A. No, sir.

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Q. What type of competition did Clorox have before——

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A. They never made any deals that I know.

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(Tr. p. 2532)

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Q. Of your sales, sir, what percent of those sales go to grocery stores as opposed to variety and drug and department stores?

Hearing Examiner Haycraft: He said grocery stores are all. He didn't say he sold to anything else.

Mr. Deveny: I wasn't clear on that, your Honor. Thank you.

Hearing Examiner Haycraft: Is that all you sell to?

The Witness: Yes, sir. All grocery stores.

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(Tr. p. 2535)

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Room 511-A
United States Court House
Foley Square
New York, New York

May 28, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2536)

PROCEEDINGS

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William A. Henkel

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you state your full name and your residence address?

The Witness: William A. Henkel, 60 Winding Lane, Bloomfield, New Jersey.

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DIRECT EXAMINATION

By Mr. Deveny:

Q. Could you tell us what company you are affiliated with? A. The J. L. Prescott Company.

Q. Where is that located? A. Passaic, New Jersey.

Q. What is your position with that company?

(Tr. p. 2537)

A. I am the assistant treasurer.

Q. How long have you held that position, sir? A. About 12 years.

Q. What do your duties comprise of in that position, sir? A. Well, I have complete charge of all the records.

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(Tr. p. 2538)

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Q. Mr. Henkel, I hand you Commission's Exhibit 491 for identification and ask you what that is? Could you tell us? A. This is a summary of cases of bleach, 1952 through 1957, with the sales value of those cases.

Q. Can you tell us, sir, was that prepared by you? A. That was.

Q. Was that prepared from records of the company? A. From the books and records of the company, yes.

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Mr. Deveny: I offer Commission's Exhibit 491 in evidence to be taken in camera.

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(Tr. p. 2539)

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(The document referred to, heretofore marked for identification Commission's Exhibit 491, was received in evidence in camera.)

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(Tr. p. 2542)

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Q. Mr. Henkel, I hand you Commission's Exhibit 492 for identification and ask you if you will tell us what that is? A. These are the selling prices of bleach for the period April 15 through the present time.

Hearing Examiner Haycraft: What year?

The Witness: 1954.

Hearing Examiner Haycraft: You mean those were in effect from time to time? The different prices indicate the price changes?

The Witness: That's right, sir.

By Mr. Deveny:

Q. Would you tell us about the balance of the exhibit? A. It also includes the cost of glass and containers, which is the present cost.

Q. I notice there is more to the document after the cost. Would you tell us what that figure represents? A.

Freight item. It shows the amount of freight applicable to our bleach business.

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(Tr. p. 2545)

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Mr. Deveny: Your Honor, we offer Commission's Exhibit 492 and portions of the exhibit are confidential, as expressed by the witness, so—prior to the hearing, so we would like to offer it in camera.

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(Tr. p. 2546)

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(Document referred to, heretofore marked Commission's Exhibit 492 for identification, was received in evidence in camera.)

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By Mr. Deveny:

Q. Mr. Henkel, I hand you Commission's Exhibit 493 for identification, and ask you if you can tell us what that is, sir? A. This is a summary of the advertising and promotional expenditures made during 1952 through 1957.

Q. Was that document prepared by yourself?

(Tr. p. 2547)

A. It was.

Q. From what—— A. (Interposing) From the books and records of our company.

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Mr. Deveny: We will offer 493 at this time,

(Tr. p. 2548)

your Honor, in camera on the basis of the witness' testimony.

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(Document referred to, heretofore marked Commission's Exhibit 493 for identification, was received in evidence in camera.)

By Mr. Deveny:

Q. Mr. Henkel, the Exhibits 491, 492 and 493, would the figures on those exhibits include all liquid bleach produced by the Prescott Company? A. That is so.

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(Tr. p. 2549)

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Q. Mr. Henkel, what brand name is the Prescott liquid bleach sold under? A. Dazzle Bleach.

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(Tr. p. 2551)

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CROSS EXAMINATION

By Mr. Royall:

Q. These figures include your private label brands, do they, sir? A. Which figures are you referring to?

Q. The figures in these exhibits that you prepared? A. Yes, sir.

(Tr. p. 2552)

Q. There is little or no advertising and promotion by you for private label brands, is there? A. That's right.

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(Tr. p. 2563)

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Robert Prescott

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: What is your full name?
The Witness: Robert Prescott.

* * * * *

DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Prescott, are you appearing here today under subpoena? A. Yes, I am.

Q. What company are you affiliated with, sir? A. The J. L. Prescott Company in Passaic, New Jersey.

Q. What is your position with that company? A. Treasurer.

Q. How long have you been in that position, sir?

(Tr. p. 2564)

A. About 30 years.

Q. Is the Prescott Company a public corporation or a family type? A. It's a family type.

Q. How long has it been in business? A. I think about 87 years.

Q. What business is the J. L. Prescott Company engaged in? A. In the manufacture and sale of household specialties such as bleach, household ammonia, liquid starch, stove polish, metal polish, laundry blueing. We make a dishwashing detergent and there are several other small items.

* * * * *

Q. In addition to your duties as a corporate officer, sir—maybe at this point we might determine what your duties are as a corporate officer. A. Well, I work on budgeting, in advertising and sales promotion in conjunction with other members of the firm.

(Tr. p. 2565)

Q. Do you take an active part in the management and policymaking decisions of the company? A. Yes, I do.

Q. Can you tell us, sir, approximately what percent of your total business of the company of all products is accounted for by the sales of liquid bleach? A. Approximately 50 percent.

Q. Is the liquid bleach produced by your company a household or an industrial type? A. Entirely household.

Q. Where is your liquid bleach produced, sir, what geographic location? A. In Passaic, New Jersey.

Q. Where is your liquid bleach sold? A. I have here in the court a map that sort of outlines the territory. You will find on the back the typewritten notation explaining that map.

Mr. Tincher: Mr. Reporter, would you please mark as Commission's Exhibit 495 for identification, a printed map of the northeastern portion of the United States with various areas shaded with a pinkish color pencil, and as Commission's Exhibit 495B—we have to make the front "A," a typed statement on a label of the J. L. Prescott Company.

(The documents referred to were marked as Commission's Exhibits 495A and B for identification.)

(Tr. p. 2566)

By Mr. Tincher:

Q. I hand you Commission's Exhibit 495 for identification, sir, and ask you if that is the map you have just been discussing? A. Yes, it is.

Q. Do the areas in pink show where your product is sold primarily? A. That's correct.

Q. Do I understand that there is a possibility that some might be sold outside of the pink areas to a minor extent? A. That's correct. The pink areas show where we make

deliveries and, of course, there are certain chains that might make distribution in areas where we actually don't deliver ourselves.

Mr. Tincher: I offer Commission's Exhibit 495 for identification, sir.

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Hearing Examiner Haycraft: All right, Commission's Exhibit 495A and B for identification are received in evidence.

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(Tr. p. 2567)

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Q. Are your other products sold in the same sales area as your liquid bleach? A. Our stove polish is sold nationally and liquid blueing is sold in areas outside of that, but all of our Dazzle products are sold within that area.

Q. Do you have direct salesmen in the sale of liquid bleach in your other areas in this northeastern part of the nation, or do you use brokers? A. We have salesmen and we also have two brokers in that area.

Q. Where are the brokers located, sir? A. There is one in Albany and one in New York City.

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(Tr. p. 2568)

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Q. How is your liquid bleach advertised, and by that, sir, I mean first what media is used? A. We use television spot announcements. We have radio spots in some areas and newspapers in some areas.

Q. Are these media used continuously or for given lengths of time or sporadically or just how are they used? A. We generally advertise from approximately the middle of March until the middle of November, and then have no advertising for the period in between.

Q. What's the basis for that selection, sir? A. Well, we feel that the advertising budget will produce more results if it's concentrated during that period of time rather than spread over the twelve months.

Q. Has your company considered sponsoring a T-V or radio program as distinguished from a spot? A. No, sir.

Q. In the advertising that you do, sir, are you familiar with whether or not there is a discount schedule? A. I know that in television advertising and in radio advertising there is a discount, sliding scale discount, depending upon the amount of space or time taken. I don't know exactly

(Tr. p. 2569)

what those discounts are.

Q. Does your company receive the maximum discount in the various media? A. No. We do not.

Q. How does your company promote its liquid bleach, and I use the term promote as distinct from actual advertising on a medium? A. Our principal form of promotion to the trade is what we call a count and recount deal which we run twice a year. It's usually in the spring and in the fall. We give an allowance of 20 cents a case for a period of approximately a month at each of those times; ten cents off it we call a factory allowance, which is supposed to reflect in a lower price, and the other ten cents is for advertising and promotion by the customers.

Q. Why do you use this particular method, sir, in selling your liquid bleach?

* * * * *

A. I think I'd answer that by saying that up to three or four years ago we used to have cooperative advertising contracts with most of our accounts, and at about that

time the Clorox Company changed their contracts—our contracts were quite similar to Clorox' at that time. When they made that change, we felt that with our smaller volume of sale, that

(Tr. p. 2570)

we could do a more effective job by having a little stronger promotion twice a year than having it run pretty much uniform through the year.

Q. What was the change in the Clorox method that you speak of, sir? A. I think I am correct when I say this. They have now cooperative advertising contracts with the trade allowing six cents a case off on all cases sold, and accumulations to be paid quarterly, and they do not require any specific performance of the advertising, I believe. I think there are suggestions about what could be done, but there is no actual requirement of performance on the contracts.

Q. Well, I appreciate that, sir. My basic position is, how is that a change from the old method? You spoke of a change. A. They used to require proof of advertising and they would run—I think they used to give 10 cents a case off for a specific period of time.

Q. Mr. Prescott, I will hand you Commission's Exhibit 498 and I will caution you, this exhibit is in camera, so don't mention any figures upon the record. I will ask you if that document will include any failure of income to be realized or in any other way include the amount expended in the count and recount program of your company as you have described it?

(Tr. p. 2571)

A. Yes, sir.

Q. Those amounts are included in that exhibit? A. Yes, sir.

* * * * *

Q. Now, this count and recount that you mentioned used twice during the year, sir, is at least a portion of that actually passed on by grocers, generally speaking, on the retail shelf? A. Generally speaking, it is.

Q. What effect does that have on a quart bottle, for example, on the price on the retail shelf? A. Usually it lowers the price one cent per bottle.

Q. Has your company found from its experience that the use of the count and recount method aids in the sale of liquid bleach? A. We feel that it does.

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(Tr. p. 2572)

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Q. Do you grant your bleach purchasers any price discounts, such as, for example—rather than that, why don't you just give us the complete discount structure, if there is any, on your prices? A. We have a quantity discount. A customer—two percent. A customer must purchase a minimum of two hundred cases of bleach. In addition to that, they can order lesser quantities of any of our other products and get the two percent discount, when the delivery is made, all at the same time.

Q. Why is the reason, sir, if there is any, that you are able to offer such a discount? A. The saving in delivery.

Q. Saving to your company? A. Saving to our company.

Q. Do you have any other discounts? A. Cash discount, two percent, ten days.

Q. Does that complete your answer? A. Yes.

Q. Does your company receive or purchase in store promotions on its liquid bleach? A. We do occasionally. Very infrequently, but we have.

Q. Is an in-store promotion of any aid in the sale of liquid bleach? A. We feel that it is.

Q. How does your company go about obtaining an in-store

(Tr. p. 2573)

promotion? A. There are some chains that have a service for special promotions where they charge so much per store, and where it is available we have at times, to bolster distribution or help sales, used that form of promotion.

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Q. First, will you tell us what you are talking about when we speak of in-store promotions? A. Generally, basket or end displays.

Q. What do these consist of, sir? A. A larger than normal display of the merchandise concentrated usually in an area separated from the section that it normally is sold in.

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(Tr. p. 2575)

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Q. Would you tell us the competitive factors that your liquid bleach must face in order to sell?

* * * * *

A. Well, the demand for competitive brands.

Q. What do you mean by that answer, sir? I am not quite clear. A. I am not sure that I understood your question.

Q. Well, perhaps I should rephrase it, sir.

In other words, what I mean is, what are the market facts or the competitive facts that a liquid bleach producer, such as yours, has to consider in selling his liquid bleach?

* * * * *

A. Well, I would say the activity of competition. The price, you mean?

Q. Not limited to price, sir. All factors that would figure into the picture. A. I would say the activity of competition.

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(Tr. p. 2576)

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Q. Does the Prescott Company in selling liquid bleach have any trouble obtaining shelf space? A. Yes, we do.

Q. What does your company do in an effort to obtain shelf space, sir?

Hearing Examiner Haycraft: Shelf space where, Mr. Tincher? In a wholesaler or in a retailer?

Q. I meant in the retail stores where the housewives purchase. A. Yes.

Q. And the pending question, to you, Mr. Prescott is, what your company does in an effort to obtain shelf space. A. We attempt to create an acceptance for our brand, if possible, a demand to enable us to get the distribution which is necessary for the successful sale and promotion of the product.

Q. How do you create this demand, sir? A. Through our advertising and promotion expenditures.

Q. Who are the other liquid bleach producers selling in the same sales area that your company sells in? A. Clorox, of course. In certain areas, for example, in this Metropolitan area, Rose-X. In Philadelphia, Hood 33 Bleach. In Baltimore, there is the Chlorinated Products Company, and there are many relatively small ones. I don't

(Tr. p. 2577)

know the name of too many of them offhand.

Q. The small ones you speak of, sir, are they local in nature? A. Always local in nature.

Q. Do you know whether they are all individual companies or are they different brands that you have in mind? A. They are different brands. They are different companies, too.

Q. Have you named the major ones that you can think of, sir? A. Yes, I have.

* * * * *

Q. Would you tell us, sir, the factors that are taken into consideration by your company in determining what price it

(Tr. p. 2578)

will charge for its liquid bleach? A. Well, we felt that we wanted to have margin enough to advertise and promote the product and, frankly, we pretty much followed the pricing that Clorox has. We felt that we couldn't sell higher than Clorox so that's really been our determining factor.

Q. Is there any particular reason, sir, for your sales area of liquid bleach being in the areas it is in, in the pink shading, rather than covering the entire—— A. (Interposing) Yes, there is.

Q. What is that, sir? A. The distance away from the factory is the limiting factor.

Q. Why, sir? A. Because of the cost of transportation. You get beyond a certain number of miles and you can't afford to deliver it.

Q. Can you give us an approximation, sir, of how far out such an area extends where the profit possibility remains? A. I would say around four hundred miles would be the furthest distance from our plant.

Hearing Examiner Haycraft: Is that about the distance a truck could go in one day?

The Witness: That's about right. Of course, outside truckers have a rate, you see. I wouldn't know whether they take it in one day or two. But it's the rate that makes it

(Tr. p. 2579)

prohibitive.

Hearing Examiner Haycraft: Do you use outside truckers on some of your deliveries?

The Witness: On some of our deliveries.

By Mr. Tincher:

Q. Will you tell us from the viewpoint of your company what the strength and significance of the Clorox competition in liquid bleach is, if there is any?

* * * * *

A. Clorox is the dominant factor in all of the territories where we sell.

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Q. To what does your company attribute that, sir?

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A. The expenditure of money for advertising and promotion which they have done very successfully.

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(Tr. p. 2580)

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Q. Let me ask you, is your liquid bleach a sodium hypochlorite solution? A. Yes.

Q. Is it a five and a quarter per cent solution? A. Yes, sir.

Q. Have you had any occasion, sir, to see yourself, personally, the labels of the other liquid bleaches sold in this area? A. Some of them.

Q. Now limiting your answer, sir, to the ones that you have actually seen with your own eyes, can you tell us if those bleaches are also a five and a quarter per cent sodium hypochlorite solution?

Hearing Examiner Haycraft: Whether they advertise themselves to be?

Mr. Tincher: That's right.

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A. Almost all of them. I believe there are may be 1 or 2

(Tr. p. 2581)

or 3 that sell in gallon bottles, I think, 3% solution. But they are relatively small and unimportant.

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(Tr. p. 2582)

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Q. Can you tell us, generally speaking, in your sales area how many different brands of liquid bleach the grocery store will carry? A. Of course, it varies quite a bit depending upon the

(Tr. p. 2583)

individual chain. I would say from three to maybe five.

Hearing Examiner Haycraft: He didn't restrict his question to chains, as I understood it.

The Witness: The same thing, I think, would be relatively true of the independents. They probably would carry many brands that the chains didn't carry.

* * * * *

Q. What percentage of your liquid bleach business, sir, is sold in grocery stores as distinguished from drugstores and variety stores or any other type of stores? A. Almost a hundred per cent.

Robert Prescott—Direct

(Tr. p. 2584)

Q. Do you have any idea what per cent of your grocery store business is sold to chains as contrasted to independents? A. I would say——

Hearing Examiner Haycraft: (Interposing) That's a different question than the one to the other witness. This is on your Dazzle.

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A. Approximately 60%, I would say.

Q. Does your company belong to or know of any trade association of household liquid bleach——

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(Tr. p. 2585)

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The Witness: There has been formed, I think, about two years ago, as a part of formerly existing group—I can't think of the name of it offhand. A bleach makers' organization.

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(Tr. p. 2586)

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Q. Let me ask you, sir, if that is an organization in Philadelphia? A. I think that's where it is located.

Q. Let me ask you, sir, if that is a group of industrial or commercial bleach producers as distinguished from household——

* * * * * *

A. I believe that it is not industrial. I believe that it is groups that sell to household consumers.

Q. Does your company belong to this organization, sir? A. Yes, we do.

Q. Can you give me the name of this organization? A. I just can't remember. It's some united guild or something.

* * * * * *

Robert Prescott—Direct

(Tr. p. 2590)

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Q. Since 1952, up to through 1957, has your concern lost any grocery store accounts on liquid bleach?

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(Tr. p. 2592)

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Hearing Examiner Haycraft: (Interposing) Why prior to? Why should we be interested at all in what the industry was prior to the acquisition?

Mr. Tincher: Because, as we allege in our complaint and as I believe the evidence is showing, the Clorox Chemical Company on its own, without the aid and assistance of Procter & Gamble was gradually pulling away from the liquid bleach market.

Hearing Examiner Haycraft: So what? We can't hold the respondent responsible for that.

Mr. Tincher: No, sir. We wouldn't allege that's respondent's fault. It is our contention it is a market fact. If we were just going to find out what respondent does in a Section 7 case, we could eliminate about 48 per cent——

Hearing Examiner Haycraft: (Interposing) That thing cuts two ways. If Clorox was able to get 48 per cent of the business, I think that's the thing we can use, the various methods it used prior to its acquisition by Procter & Gamble. How can we assume it will get more, except as the evidence shows how Procter & Gamble's size and its ability to get better rates and so forth and so on.

(Tr. p. 2593)

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Hearing Examiner Haycraft: I understand your question was whether he had lost any business, any accounts. Of course, anybody that is familiar with business of this

kind at all knows, yes, certainly, anybody, everybody is going to lose some business and pick up more.

If he testified that he lost certain accounts, that opens the door for Mr. Royall to find out what accounts he lost and where they were and now you asked him what the conditions of why he lost them, his opinion as to why he lost them.

We are spending a lot of time and money on a factual situation that just doesn't have any bearing as I see it. If you would ask that question subsequent to August

(Tr. p. 2594)

1957, from August 1957 up to now, I think it would be relevant and material but I just can't see why we want to go into an obvious situation.

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Q. Mr. Prescott, does your company advertise in daily newspapers in your sales area? A. Yes. In some territories.

Q. Are you familiar with the various rates that are offered by those newspapers and by rates, I have reference to the categories of rates that are offered? A. I believe they have a local rate and a national rate.

Q. What rate does your company receive when it advertises?

(Tr. p. 2595)

A. The national rate.

Hearing Examiner Haycraft: Is that on your liquid bleach?

The Witness: Yes.

Hearing Examiner Haycraft: Is that higher or lower than your local rates?

The Witness: It is higher.

Q. Do you know what the local rate applies to, sir, what type of advertising? A. My understanding——

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A. It is for local storekeepers, local people of that kind as a rule.

By Mr. Tincher:

Q. When you say store, do you mean retail? A. Retail.

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(Tr. p. 2596)

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Q. Generally speaking, sir, in what section of the grocery store in your sales area are liquid bleaches placed? A. They are in a section where cleaners and soaps and products of that kind are sold.

Hearing Examiner Haycraft: Of course, that's in well organized stores?

The Witness: Yes. Chain stores. Any self service type of store.

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(Tr. p. 2597)

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Q. Is the Prescott Company affiliated with or a subsidiary of any other concern? A. We have a subsidiary company called the Blue Magic Company.

(Tr. p. 2598)

Q. How does that company fit into your operations, sir? A. It is a sales company. We sell our private label products through Blue Magic.

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Hearing Examiner Haycraft: Blue Magic might indicate it might be bluing.

Do you sell all your products to private brand distributors through the Blue Magic subsidiary?

The Witness: Yes, sir.

Hearing Examiner Haycraft: What is it, a transfer on your books from your plant?

The Witness: J. L. Prescott Company purchases all supplies and manufactures and sells to Blue Magic at a fixed price. Blue Magic sells to their customers.

By Mr. Tincher:

Q. How many employees does your company have all together, sir? A. In the plant?

Q. And your salesmen, too.

(Tr. p. 2599)

A. I think about 95. Approximately 95. I think including the salesmen, it might be 105.

* * * * *

Q. Is the Prescott Company producing liquid bleach at full capacity, sir? A. No.

Q. Can you give us an approximate idea of what capacity is being used or what shifts are being worked, however you would put it? A. We work just one, eight hour a day shift. We could probably produce at least double what we are producing within that same eight-hour period.

Q. Have the costs of production and distribution of liquid bleach increased since 1952? A. Yes, they have.

Q. Have you passed on all these cost increases to your customers? A. When Clorox does.

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(Tr. p. 2600)

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Q. Mr. Prescott, are you familiar with the fact that

about August 1, 1957, the Procter & Gamble Company purchased the Clorox Chemical Company? A. Yes, sir.

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"Q. What effect, if any, will that acquisition have on the business of your company, sir? A. Well, it is our feeling that if approximately the same promotions are continued that the Clorox Chemical Company used and in addition to that, things such as coupons, so much off on the label, that type of promotion added to it would definitely be harmful to our business.

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(Tr. p. 2602)

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Room 511-A
United States Court House
Foley Square
New York, New York

May 29, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2603)

PROCEEDINGS

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Robert Prescott

resumed the stand and testified further as follows:

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CROSS EXAMINATION

By Mr. Royall:

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(Tr. p. 2606)

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Q. Now, you were asked yesterday about your competitors. I would like to hand you a paper designated as Respondent's Exhibit 16 which has already been identified in a previous hearing this week, and ask you if by looking at this paper and refreshing your recollection, you can name other competitors in the New York area and New Jersey that your company has.

Will you examine it and if you can add any, I would appreciate your doing so.

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(Tr. p. 2608)

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A. No-Worry. Mel-O-Mix. Acquilina. Blue Ribbon was one I referred to when I mentioned the fact that there was a 3 per cent bleach packed in this area. La Blancalina. Spotless White.

Q. Some of these are small bleaches, are they not? A. That's correct.

Q. Do you recall whether in Baltimore among your competitors a Londre and Deltox? A. Yes, sir.

Q. Do you recall in New England your competitors include Savol—— A. I mentioned that.

Q. Sunlight? A. Yes.

Q. Snoboy? A. Snoboy, I don't know.

Q. Star Water? A. Yes.

Q. Now, there are, of course, other bleaches that you would not recall in this area, of these various areas? A. I think so.

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(Tr. p. 2610)

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Q. I believe Clorox is the largest bleach producer, is it not? A. Yes.

Q. Is that what you meant yesterday when you said it was a dominant producer? A. Yes, sir.

Q. With relation to your advertising and radio programs and television, you did have some radio program shows, did you not? A. Many years ago.

Q. Well, didn't you have one in Boston in 1956, the "Morgan Baker Show"? A. A participation show. We did.

Q. You participated with others? A. That's right. We did.

(Tr. p. 2611)

Q. Did you have the Priscilla Fortesque show and the Carl Moore show about the same time? A. I have forgotten. It is quite possible.

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(Tr. p. 2612)

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Q. Do you recall also sponsoring in 1956 the WEEI supermarket program? I suppose that is a radio station name.

Do you remember that?

Mr. Tincher: It is a Boston station, if that is any help.

By Mr. Royall:

Q. That's what I was asking about. A. That was radio, wasn't it?

Q. Yes, sir. A. I do remember it.

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(Tr. p. 2613)

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Q. Do you recall whether in May 1957 in your announce-

ment of the price change which was to become effective May 20, 1957, you made this statement, and I quote.

"Dazzle is being currently advertised on either T-V or newspapers on a substantially increased rate over previous years." A. That's correct.

Q. You did make that statement? A. Yes.

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(Tr. p. 2617)

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REDIRECT EXAMINATION

By Mr. Tincher:

(Tr. p. 2618)

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Q. These bleach companies, you designated as small, the Mel-O-Mix Company, No Worry, Acquilina, Spotless White, Blue Ribbon. Are any of these companies large companies? A. None of them.

Hearing Examiner Haycraft: I don't know what you mean by large.

By Mr. Tincher:

Q. Are any or all of them purely local companies as distinguished from people selling more than one state or more than one metropolitan area? A. I believe Savol has a little wider distribution than most of the others.

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(Tr. p. 2624)

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RECROSS EXAMINATION

By Mr. Royall:

Q. About the promotions, have you not for a number

of years offered your customers one case with ten? A. In certain instances?

Q. In certain instances. A. Yes.

Q. And in March, 1956, didn't you offer one case with five for a limited period of time? Do you recall? A. I don't recall. I am sure it wasn't done in every territory. It may have been done in certain territories. I don't definitely recall.

Q. Did you not in May, 1956, offer a toy doll as a self-liquidating premium?

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(Tr. p. 2625)

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A. Yes, in Massachusetts, I believe, in one territory in Massachusetts, we did.

Q. On bleach? A. On bleach.

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(Tr. p. 2626)

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FURTHER REDIRECT EXAMINATION

By Mr. Tincher:

Q. I hand you Commission's Exhibit 491, sir, and ask you if the sales figures in dollars referred to there are gross or net? A. Gross.

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(Tr. p. 2627)

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Mr. Royall: Your Honor, we had a discussion yesterday, and they took notes and they went over the notes before I left. We thought maybe, instead of putting witnesses on the stand about this, we might be able to agree

what the facts are. If we can do it, we won't have to put witnesses on. I don't know what happened today, so I can't vouch for that. I mean what happened out at the plant today.

As to Exhibit 491. I hand that to your Honor. We examined in the general ledger the monthly dollar totals of all bleaches, which total includes totals for Dazzle and totals for private label bleaches, but the private label bleaches were not segregated. The totals on the general ledger were the same as those in Exhibit 491.

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(Tr. p. 2628)

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Mr. Royall: The only record supporting these ledger figures was stated to be the invoices which would support the total sales of liquid bleach. We requested these invoices, but they were denied on the ground it would be unreasonable to produce them.

That is correct, isn't it?

Mr. Tincher: That's my understanding. There are thousands of them. It wouldn't do you any good to look at a few of them. In other words, an absolute audit of the company's books.

Hearing Examiner Haycraft: These ledgers are the books used in the transaction of the company's business?

Mr. Royall: Yes, sir. We don't deny they were used by the company as part of the records in the transaction of their business.

We requested, but were denied any records or any information concerning the location of the records showing the quantities of private label or Dazzle Bleach except in the one total.

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Robert Prescott—Redirect

(Tr. p. 2631)

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Mr. Royall: I want to ask specifically that your Honor require them to produce the records showing the quantities of private label and the quantities of Dazzle Bleach for the period set out in Exhibit 491.

Hearing Examiner Haycraft: I decline to do that. Not relevant or material to the issues in this case.

Mr. Royall: We requested, and did not receive the records showing the prices of private label bleaches, the average price of private label bleaches.

Is that correct, is it not, sir?

Mr. Tincher: Yes. I think in all fairness to the witness, it was primarily on my recommendation again, that they didn't. Although I may be slightly incorrect in that.

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(Tr. p. 2633)

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Mr. Royall: Your Honor, there was a statement yesterday which Your Honor referred to a moment ago about putting a percentage figure on this exhibit, the percentage of private brands. That figure was given to us yesterday in the meeting as an estimate. I don't think probably I should state it publicly. I would like to find out if it is the

(Tr. p. 2634)

intention of the Government to put that statement——

Hearing Examiner Haycraft: (Interposing) I think I should like to follow the same procedure I did before, and have the witness write in his own handwriting, whoever prepared that exhibit—if the witness isn't here yet——

Mr. Royall: (Interposing) I think the witness here heard that.

(Tr. p. 2635)

Hearing Examiner Haycraft: Put a statement on there that the foregoing figures, it is his estimate that such and such a percentage was Dazzle brand, and such and such a percentage was private labels. That will give us some idea of the private brand business as compared with the other in a general way without going into detail.

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(Tr. p. 2656)

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Room 395
Old Suffolk Court House
Boston, Massachusetts
June 3, 1958

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2657)

PROCEEDINGS

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Leon Brower

was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: Will you state your full name?

The Witness: Leon Brower.

* * * * *

(Tr. p. 2658)

By Mr. Deveny:

Q. What company are you affiliated with? A. Sunlight Chemical Corp.

Q. Where is that company located? A. In Rumford, Rhode Island. That is a division of the town of East Providence.

Q. What is your position with that company? A. President.

Q. How long have you been president of the company? A. Thirty-nine years.

Q. How long has the company been in business? A. Thirty-nine years.

Q. What does your company do? A. We manufacture a rather complete line of household chemicals for cleaning and washing in the home, that sell through the regular grocery outlets of the chain stores and wholesale groceries.

The lines include bleach, ammonia, regular starch, plastic starch, and recently detergent to wash dishes.

We also supply bleach to laundries and a few mills.

Q. Is that a significant portion of your bleach business, or how significant is it, I should say? A. The laundry and mill business would be about 20 percent of the total amount of bleach we sell.

(Tr. p. 2659)

Q. What is the production location for your liquid bleach manufacturer? A. We do not actually manufacture the bleach which is sodium hypochlorite. We buy that in tank cars from a local large chemical concern.

Q. Where do you produce that? Where do you pack that? At your plant? A. Oh, yes.

Q. Do you have any other location? A. No. Warehouse stocks, that is all.

Hearing Examiner Haycraft: Do you mean all you have to do is dilute that, Mr. Brower, this concentrate that you buy? A. That is all we do, bring it in in tank cars, put it in a tank, add water to it, and put it in bottles and deliver it to the customers. We have in the past manufactured our own sodium hypochlorite bleach solution. If you do it that way you have to go and buy chlorine and caustic soda and put them together to make the hypochlorite and we buy from the same concern. Their price for the manufactured product was about the same as the two raw materials, so that is why we bought it all manufactured.

Q. What percent of your company's liquid bleach would be represented by the household liquid bleach? May I rephrase that?

(Tr. p. 2660)

What percentage of your total business is accounted for by liquid bleach?

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A. About 25 percent.

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Q. I hand you Commission Exhibit 496 for identification and ask if you can identify that for us?

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(Tr. p. 2661)

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The Witness: In keeping our records we have a certified public accountant who comes in every month and gives us a balance sheet, a trial balance sheet and a profit and loss. He does not break the sales down into all the various products we make. We do that ourselves.

And from our books I extracted these figures, going back six years. I didn't bring the original books in because, to represent this, I would have to have 50 great big ledgers. I could go through them and take the totals off myself in the office but I didn't think it was necessary. I certified that I personally took these off those books. These are the correct figures.

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(Tr. p. 2663)

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Mr. Deveny: Your Honor, I would like to offer Exhibit 496, if I may, in camera. I realize what Mr. Brower said. But for purposes of consistency, we will make the offer in camera.

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(Tr. p. 2664)

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(The document heretofore marked Commission's Exhibit 496 for identification was received in evidence and ordered SEALED.)

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(Tr. p. 2670)

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By Mr. Deveny:

Q. I would like to ask you first, under what brand names do you produce your bleach? A. We have three brands: Sunlight, Moonlight, and Wescco.

Q. All three are your own brands? A. Yes. Wescco comes from West Springfield Chemical Company, which we bought 20 years ago.

Hearing Examiner Haycraft: What is the difference between Sunlight and Moonlight?

The Witness: Well, Sunlight is our first grade, and Moonlight is our second grade, theoretically.

Hearing Examiner Haycraft: Does that mean that there is a different percentage of the solution?

The Witness: No.

(Tr. p. 2671)

Hearing Examiner Haycraft: In there no difference?

The Witness: It all comes out of the same tank.

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(Tr. p. 2676)

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Q. Could you explain the difference between your zones for us, sir, what zones you have? A. As most of our goods are sold delivered by our own truck, the selling price is modified by the distance of the customer. So that we take the New England States—the three southern New England States in Zone 1, and including a part of Maine.

Most of the rest of New Hampshire, Vermont, and Maine is in Zone 2. We do make Zone 3 way up in the tip of Maine. And we add ten cents a case to each zone.

Q. What is the basis for the difference between zones? A. It reflects the increased cost of delivering a much greater distance.

Q. Is that ten cents a case increase consistent all the way through between zones on all products? A. Oh, no. I was just talking about bleach.

Q. Would that have been true of all price increases in the

(Tr. p. 2677)

two different years? A. Yes. When we change our prices, maybe once every year or two years, we would increase each zone by the equivalent amount of the increase.

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(Tr. p. 2680)

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Q. Mr. Brower, could you tell us your sales area for your liquid bleach sales, geographically? A. New England.

Q. What states would that include? A. All of the New England States.

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(Tr. p. 2681)

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Q. What type of sales force do you use for your liquid bleach? A. We have our own salesmen who cover New England.

Q. Is that true for your other products? A. All our products in New England are sold by our own salesmen. We have three jobbers in New York State who sell our plastic starch; we have other jobbers in other parts of the country who sell our plastic starch.

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(Tr. p. 2682)

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Q. Mr. Brower, I will rephrase the question. Why do you use salesmen in the New England area?

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(Tr. p. 2683)

The Witness: Why do we use our own salesmen instead of brokers to sell our bleach in New England?

Mr. Deveny: Yes, sir.

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The Witness: It is a matter of opinion. I don't think I can prove it mathematically. We have tried the other way. We think we have better control of our sales force when they are drawing salaries from the office rather than sell-

ing through a broker who has other lines. I think your own salesmen can concentrate on your own products, whereas a broker may have twenty different products. I think that a direct sales force, generally speaking, is more efficient and will produce better results than hiring an outside sales force like a broker.

By Mr. Deveny:

Q. Do you advertise your liquid bleaches? A. No, sir.

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(Tr. p. 2684)

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Q. Had you advertised the bleach in the past? A. Do you want to go thirty years back, yes.

Q. Why now do you not advertise the bleach?

* * * * *

The Witness: We see very little future in this, to the Sunlight Chemical Corp., in liquid bleach. I think our future lies in selling plastic starch. Therefore, any surplus money we have to put into advertising we put into plastic starch, which shows a good profit rather than liquid bleach whch is highly competitive and doesn't show a good profit.

By Mr. Deveny:

Q. Do you promote the liquid bleaches? A. Well, promote it?

Q. That would be the way I use the term, sir, let me explain, in opposition to paid media advertising for promotion. A. Our salesmen try to get orders for liquid bleach when they call on the trade. And we do put on, about once a year, a special sale on liquid bleach. We reduce the price, or give one case free with ten—the usual

deals that are put on by people who sell to the grocers and trade.

Q. How often would those deals be, did you say?

* * * * *

The Witness: Not very frequently. We put one on

(Tr. pp. 2685-2686)

this year. We didn't put any on for the last two years.

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Q. Were there any other promotions used on liquid bleach other than what you have mentioned? A. No. Well, I wouldn't make an unqualified No. We put sales in stores on our whole line. We will send three people

(Tr. p. 2687)

into a store and if they buy a bottle of any of our products we will give them a bottle of bleach or ammonia. It is all tied in with the general advertising of a special store sale.

Q. When you say a special store sale, what determines that? A. Usually we go to the First National, we take ten First National Stores, for ten weeks, and we send three people in to that store and they would have all our products on display, and as the customers came by our sales people would accost them and say, "Would you like a bottle of ammonia bleach free? If you buy one we will give you one free."

We sell a tremendous quantity of goods that way. Where a store would only sell ten cases we would sell 200 but it costs us about $300 a week to do it. I brought that out to show you that I couldn't give an unqualified No that we don't spend any money on advertising liquid bleach because a proportion of that cost should be allocated to the liquid bleach as well as the other products. How much I don't know.

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Leon Brower—Direct

(Tr. p. 2688)

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Q. Could you tell us what some of the competitive factors are which determine whether or not you sell liquid bleach?

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A. What some of the competitive factors are? You mean who are our competitors? Or what they do? I don't just understand you.

By Mr. Deveny:

Q. Both, actually. What competitive elements play in the sale of liquid bleach.

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(Tr. p. 2689)

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A. I think our main competitor selling liquid bleach is the amount of money that our competitors have to spend for advertising. I do not think it is the product itself of our competitors that we fear as competition because all good brands of bleach are, chemically speaking, identical. They bear a different trade name. It is the ability of the larger companies to spend tremendous amounts of money in advertising that gets them the business instead of the smaller company like ourselves.

I think in the past the tactics of the two leading manufacturers of bleach in the country haven't bothered us particularly. I mean the ethics of their selling was satisfactory to us.

* * * * *

Q. You mentioned two of your leading competitors. Who would those be?

(Tr. p. 2690)

A. The Clorox Chemical Company, and the Prescott Company, who manufacture Dazzle.

Q. What makes your bleach sell, Mr. Brower?

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The Witness: We sell it a little cheaper. And of course there is some loyalty in business. We have been selling this before the other two people were in business. We are the oldest manufacturer of bleach in New England that is now existent. And some of our customers, like First National Stores, have bought from us since they started in business, and they like to give us some business. I don't think they need us particularly, but we have pleasant relationships and I think that has a good deal to do with it. And people still buy our stuff off the shelves because it is 2 cents cheaper than the other.

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(Tr. p. 2691)

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Q. Are the dry or powdered bleaches competitive with your liquid bleach? A. They are a competitor, yes.

* * * * *

Q. Have you noticed any of your customers switching back and forth from liquid bleach to powdered bleach?

A. Most all of our customers use both.

Q. How do they compare on a price basis?

* * * * *

A. Powdered bleach is more expensive.

By Mr. Deveny:

Q. How do the freight costs compare between the dry and the liquid?

(Tr. p. 2692)

A. Freight costs on liquid bleach is more than the freight cost on powdered bleach.

Q. Is the powder usually packed in bottles? A. It started that way but it has gone over mostly to cardboard now.

Hearing Examiner Haycraft: Why would a customer want both?

The Witness: It has only been going on about five years, powdered bleach. When they started it they were afraid that the bleach would eat through the paper carton, and so they put it in glass bottles. But now they have developed paper that is sufficiently resistant to the action of chlorine, or the oxygen, so that the packages do stay up. So they use paper cartons which are a lot cheaper than bottles to purchase and are a lot cheaper to ship by freight because they weigh less.

Hearing Examiner Haycraft: I am talking about the consumer. You said the consumers buy both.

The Witness: They buy liquid bleach and powdered bleach. Do you want me to elaborate on why?

Hearing Examiner Haycraft: The same customers?

The Witness: The same customer.

Hearing Examiner Haycraft: Yes, I would like to know more.

Mr. Royall: Objection.

(Tr. p. 2693)

Hearing Examiner Haycraft: Overruled. Go ahead.

The Witness: Bleaches are used in households for two main purposes: for bleaching clothes in washing machines, or by hand. When a woman washes clothes in the washing machine or by hand—she gets a much whiter wash if she uses bleach than if she doesn't. Therefore, practically all women use bleach. They use liquid bleach in the washing machine or when they wash in the tub by hand. First, I think because it is cheaper than the powdered bleach.

Second, because they are a little afraid that when they pour this powder on that some of the lumps of powder will get on the clothes and burn holes, which it is possible to do. I think they use the powdered bleach around the sink.

A woman has a porcelain sink that she wants to bleach, on which she has fruit stains or something. She can take liquid bleach and pour it in but the liquid bleach will run right down the drain and just bleach what it happens to hit. You can't keep it there long. Whereas a powder bleach you can take the carton and sprinkle a little and it will stand there and bleach the sink out better. That is what women tell me. I think it is so, too. So they really need both.

Hearing Examiner Haycraft: Your powdered bleach then performs more of the function of a cleanser with a bleach in it, such as Comet which Procter & Gamble have?

(Tr. p. 2694)

Mr. Royall: Objection.

The Witness: Yes.

Hearing Examiner Haycraft: It would be more competitive with that?

The Witness: Of course there are two kinds of powdered bleach.

Hearing Examiner Haycraft: Overruled.

The Witness: You understand that all liquid bleaches are sodium hypochlorite. Powdered bleaches are in two categories. First, the calcium hypochlorite bleach which releases the oxygen, which does the bleaching. It is a chlorine compound and has practically identical action to the liquid sodium hypochlorite. But there is also powdered bleach which doesn't have any chlorine in it at all. It is a separate oxygen compound, entirely different.

Hearing Examiner Haycraft: What kind do you make, chlorine?

Mr. Royall: Objection.

The Witness: We make only the liquid bleach. We haven't gone into powdered bleach yet.

Hearing Examiner Haycraft: I thought the question awhile ago was that you did make it.

Mr. Deveny: I don't believe I asked that, Your Honor. That was next.

The Witness: No.

(Tr. p. 2695)

Hearing Examiner Haycraft: What was the question that started all this?

Mr. Deveny: I asked him if there was competition between powdered bleach and his liquid bleach.

Mr. Royall: It was a competitive question, your Honor.

Hearing Examiner Haycraft: On my own motion, all that testimony is stricken.

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(Tr. p. 2696)

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Q. Could you tell us, Mr. Brower, what factors you must consider in setting the price of your liquid bleach? A. I think there are two factors, first the actual cost of your bottles, bleach, labor, and caps, the actual physical components of the product, and add what you would like to get as your overhead and a reasonable profit. That is what you

(Tr. p. 2697)

should sell it for. But you can't always do that because you have competition and you must bear in mind the fact that other people are selling at a price. So you find out what your competitors' prices are and you arrive at a

selling price by bringing those two factors into balance: your competition and your cost.

Q. Let me ask you this, sir: If your costs go up, do you always reflect that increase in your price? A. Well, we do, but variations in cost are very slight. The cost of bottles is very stable; the cost of raw materials, of bleach, is very stable. So that you might change your price once a year or once every two years. It is not a business that is going up and down each month or each week. It is over the years that the variation is.

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(Tr. p. 2698)

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Q. I think you have already said, Mr. Brower, that your bleach is sodium hypochlorite. What percentage of sodium hypochlorite is your bleach? A. Five and a half percent available chlorine.

Q. Do you have difficulty obtaining shelf space for your bleach? A. I don't think we have difficulty obtaining space. I think we have difficulty in obtaining a given amount of space. Of course, we would always like the largest amount of the shelf space that we can get. Our competitors do, also.

Q. Do you know what determines how much you do get?

* * * * *

A. I think that the stores give the greatest space to the item that moves in the greatest volume.

* * * * *

Q. What type of stores handle your bleach, sir? A. Retail grocery stores.

Q. Would that include chains and independents? A. It would.

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(Tr. p. 2700)

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Q. Mr. Brower, have you attempted to get more shelf space for your bleaches?

* * * * * *

A. Generally speaking, No, with the exception that when we put these special sales on in the stores we do.

Q. Do those special sales increase your shelf space? A. Yes.

Q. How many liquid bleaches do your grocery customers generally carry in your sales area? A. The larger chains carry four.

Q. Do you know—— A. In New England.

Q. Do you know what the brands are? A. Yes.

Q. Would you tell us?

(Tr. p. 2701)

A. Clorox, Dazzle, Sunlight, and their own brand.

Q. Is that what is commonly referred to as a private label? A. That's right.

* * * * *

Q. Could you tell us what percentage of your bleach is sold in grocery stores, your liquid bleach?

* * * * *

The Witness: I said previously that 20 percent of our sales was to laundries and mills, which would leave 80 percent to grocery stores.

(Tr. p. 2702)

Hearing Examiner Haycraft: But do you sell in any other retail outlet than grocery stores?

The Witness: No.

* * * * *

By Mr. Deveny:

Q. Have you any idea of the number of liquid bleach producers in your sales territory—how many there are? A. Thirty-five.

Q. Would those be brands or producers? A. They would all be very small garage or down-cellar producers.

Q. Do you consider those small producers you mentioned competitive with your product? A. We ignore them. As a background, when I started in business forty years ago, most bleach was sold by these small producers. For instance, in New Bedford, 30 or 40 years ago, there would be 17 producers of bleaches in New Bedford, all little bits of outfits. They have gradually gone out of business. So that my educated estimate is that in the whole of New England there are probably 35 left, very small.

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(Tr. p. 2703)

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Q. Do you have knowledge of how much of your bleach is sold in chain stores as contrasted to independent grocery stores? A. I think 75 percent would be sold in corporate chains, and 25 percent to wholesale grocers and hence to independent grocers.

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Q. How many salesmen do you have in your sales force, Mr. Brower? A. Three.

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(Tr. p. 2705)

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Q. Do you have any market surveys or research facilities available to you to determine sales of your products and the success of your activities? A. We of course keep our own records of who we sell and what volume we

sell each month. The only outside—we don't hire any outside concern to make a survey, but the newspapers—there is a newspaper association in New England that does make a survey on all grocery items, and issues a very complete summary each year. We subscribe to that.

(Tr. p. 2706)

Q. What does that show, that New England survey? A. It takes each large city in New England and each state and it shows, for bleaches, what percentage in the chain stores carry Clorox, Dazzle, Sunlight, for each city and each state, and then for the whole of the area.

Hearing Examiner Hayeraft: Does it show the percentage for each one?

The Witness: For each city. For instance, they go into Providence and they might call on—there would be a thousand independent grocery stores and they might call on a hundred of them, and they would actually go to the shelves and see how many of them carry Sunlight, how many carry Clorox, how many Dazzle, and how many other brands, and give you that summary for those fifty stores. And then you would assume that the other 950 came about the same as the fifty. It is a sample.

By Mr. Deveny:

Q. Does the survey show anything other than distribution by brands? A. No, no prices. Just distribution by brands, that is what it is. It is free. Anybody can write to the newspapers, I think, and get that book free, or for a dollar. We don't hire them to do it. We just take advantage of their work.

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(Tr. p. 2708)

* * * * *

Q. In what section of the grocery store in this area are the liquid bleaches stocked? A. Most stores have a section of a gondola or group of shelves in which they have all cleaning compounds. Our bleaches are along with the other cleaning compounds, ammonias, starches, blueing, brooms, anything to clean the house.

Q. Would that include soaps and detergents? A. It would.

(Tr. p. 2709)

Q. Cleansers and powdered cleansers? A. Yes.

* * * * *

(Tr. p. 2711)

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A. Have we any facilities for scientific research?

Q. Yes, sir. A. We have a laboratory. I am a graduate chemist. I attempt to make a scientific research.

* * * * *

Q. Is the production of liquid bleach by the means which you produce it, a highly technical process? A. I wouldn't think so, no.

Q. Have you ever considered expanding your sales territory? A. Oh, yes.

Q. Have you expanded it? A. No.

Q. Why not?

* * * * *

The Witness: I said we hadn't expanded it. From the start of the company, we started in Rhode Island, and expanded over New England. But in the last twenty years we haven't expanded liquid bleach. Do you want to know why we haven't.

(Tr. p. 2712)

By Mr. Deveny:

Q. Yes, sir.

* * * * *

The Witness: The cost of delivery of liquid bleach is a tremendous proportion of the selling price. If we were to attempt to ship liquid bleach from here to Chicago, it would cost more for freight than the selling price of the product. Therefore, the only way we could expand would be to raise sufficient capital to put branch plants throughout the country, which we cannot do. So therefore, we are faced with an economic road block. We can't ship even to New York City and compete with the local New York brands. On the other hand, that has its consolation: They can't come into New England, either.

So all over the country you will find companies like mine that are regional. They are not very large and they are not pipsqueak companies, that serve that region.

By Mr. Deveny:

Q. Is the competition from Clorox any more pronounced in any section of your sales territory than any other section?

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The Witness: I think Clorox has nearly one hundred percent distribution throughout New England, irrespective of

(Tr. p. 2713)

whether it is urban or suburban.

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Q. Are you producing liquid bleach at full capacity now? A. No.

Q. What would involve producing more, from the standpoint of company operation?

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The Witness: We have very high-speed filling machinery that we can produce on that machine enough bottles in

three days to last us a month. So it would only be a matter of running the same machinery more days to produce the extra production for the increased sales.

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(Tr. p. 2715)

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By Mr. Deveny:

Q. Are you familiar with the fact that Procter and Gamble acquired the Clorox Chemical Company approximately on August 1, 1957?

(Tr. p. 2716)

A. Yes.

Q. What effect would that acquisition have upon your business?

* * * * *

The Witness: I think—I believe that it will make it more difficult for us to sell liquid bleach.

* * * * *

Q. Why would that be, why would it be more difficult to sell?

* * * * *

The Witness: I have considerable respect for the ability of Procter and Gamble to advertise planned sales campaigns. I think with their technical know-how they should be able to increase the sales of liquid bleach in their stores. Clorox has done a good job, but Clorox has confined most of their advertising to newspapers and the New York City subway. But very little television, very little radio, very little special offers tied under the bottle, "Five cents off," or a number of things that can be done. They haven't used it.

I think Procter and Gamble know how to use those things, they have tried it on their other products and will

try it on their liquid bleach to increase their sales. If they increase their sales I think that we should suffer.

(Tr. p. 2717)

But my past experience has been that that doesn't always come out that way. Sometimes if a large competitor pushes a product and brings it to more people's attention, the great increased consumption through their advertising sort of slops over and we get some of it. It has happened in the past on some other things. Clorox itself. There is tremendously more bleach sold in this country today than there was 25 years ago.

But I still think it would be more difficult for us to sell with a stronger competitor. It seems to me that is only logical. The stronger your competitor, the more resourceful, the more experienced, the more money he has, the more business he should get, and less we should get.

So I say almost unqualifiedly that we will suffer by this taking over of Clorox by Procter and Gamble.

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CROSS EXAMINATION

By Mr. Royall:

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(Tr. p. 2718)

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Q. Let me ask you something about your three bleaches. Do they sell for the same price? A. No. Sunlight sells for a little more than Moonlight, and Moonlight sells for a little more than Wescco.

Q. Approximately what is that difference? A. Ten cents a case.

Q. Is Dazzle—do they sell a good deal in some of your area? A. They are very active, yes.

Leon Brower—Cross

(Tr. p. 2719)

Q. Are they active here in New England? A. Oh, yes.

Q. Is Cormand Water a fairly big competitor in some areas? A. In some areas, yes. In Providence, Rhode Island, and in the Fall River-Bedford section.

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Q. I hand you a paper marked RX-21 and ask you to look it over and see if it refreshes your recollection as to some of the private brand bleaches sold in your territory and who makes them.

* * * * *

(Tr. p. 2720)

The Witness: I think they are all correct.

By Mr. Royall:

Q. Will you read them off? I can't put them in evidence now. Who makes them?

* * * * *

The Witness: These are the private brand bleaches: private label, Cooperative Bleaching Fluid.

Hearing Examiner Haycraft: What Cooperative?

The Witness: I don't understand that. New England Cooperatives, of Cambridge.

By Mr. Royall:

Q. That is the buyer? A. That is the buyer. And it is called Co-op Bleaching Fluid and packed by the P. H. Revell Company.

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(Tr. p. 2721)

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Hearing Examiner Haycraft: Just hand him back the list and testify from your memory as to who they are.

Then if Mr. Royall thinks you left somebody out he can hand the paper back to you.

The Witness: This is a partial list of private labels, with the buyers and packers. But there are many more private labels besides that list.

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By Mr. Royall:

Q. Is Bright Spot in your territory? A. Yes.

(Tr. p. 2722)

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Q. Is it sold by A&P? A. Yes.

Q. Manufactured by the Prescott Company?

* * * * *

The Witness: Yes.

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(Tr. p. 2723)

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Q. You know Bright Spot, do you, sold in Stop and Shop?

A. Stop and Shop?

Q. Yes. A. Yes, sir.

Q. You know that? A. Yes.

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Q. Do you know who makes it?

The Witness: Shall I tell him?

(Tr. p. 2724)

Hearing Examiner Haycraft: If you know. If you don't know, say so.

The Witness: Five years ago I packed all these private labels and I sold the business to Prescott.

By Mr. Royall:

Q. So that is the way you know? A. That's right.

(Tr. p. 2725)

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Q. Is Mrs. Lane's sold by E. T. Smith and Company in Worcester? A. Yes, sir.

Q. And manufactured by Prescott Company? A. Yes.

Q. Is Lily of the Valley sold by C&S Wholesale Grocers in Worcester, Massachusetts, and manufactured by Prescott Company? A. I don't remember. It is a very small wholesale grocer. I don't remember the brand.

Q. Is Sunny Day a private brand made by Prescott and sold

(Tr. p. 2726)

in First National Stores? A. That is correct; it is.

Q. Is Supreme Bleach a private brand sold in Supreme Markets of Dorchester, Massachusetts, and made by P. H. Rvell? A. I believe so. I can't say absolutely Yes but I think it is.

* * * * *

Q. Is Nation-Wide manufactured by P. H. Revell and Company and sold by E. C. Hall Company, Brockton and Hyannis, Massachusetts? A. Yes.

* * * * *

Q. Are there some three and a quarter percent bleaches in your area? A. Yes.

* * * * *

(Tr. p. 2727)

* * * * *

Q. Are you familiar with any of those bleaches, and if so, will you tell us about them and whether they are sold in your territory, or a part of your territory? A. The first one, Cap's Bleach, buys his raw material bleach from me, and his bottles, and puts it up and sells it locally.

Liberty I never heard of.

Aqualite I never heard of.

Snow White, there is a Snow White in Worcester, Massachusetts. Is that the one you refer to?

Q. I don't know. I couldn't tell you. A. All it says on this paper is "Snow White." There is a Snow White bleach in Worcester.

Hearing Examiner Haycraft: Is that 3¼ percent?

The Witness: I don't know. He is very small.

United, never heard of United.

By Mr. Royall:

Q. These that you do know, are they in the Providence area?

(Tr. p. 2728)

A. No, I didn't say I knew them.

Q. You knew one or two? A. Cap's Bleach and Snow White. Cap's Bleach is just Providence. Snow White, if that is the Snow White, is just Worcester.

Q. Do you know whether there are any other three and a quarter percent bleaches sold through here? A. Savol.

Q. Do you know of any others, also? A. I know there are other small manufacturers of bleach, Yes.

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(Tr. p. 2739)

REDIRECT EXAMINATION

By Mr. Deveny:

Q. Cormand Water Bleach 5¼ percent sodium hypochlorite? A. No.

Q. What is the percentage, if you know? A. It was 1.75. I think they have now raised it to around 3¼—3.25 percent.

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(Tr. p. 2740)

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Room 395
Old Suffolk County Courthouse
Boston, Massachusetts

4 June 1958

Met, pursuant to adjournment, at 10:10 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2741)

PROCEEDINGS

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(Tr. p. 2742)

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Solomon S. Buchman

was called as a witness and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you state your full name.

The Witness: Solomon S. Buchman.

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(Tr. p. 2743)

DIRECT EXAMINATION

By Mr. Tincher:

Q. What is your occupation? A. I am in the bleach water business.

Q. What company are you with? A. Savol Bleach Company, of East Hartford, Connecticut.

Solomon S. Buchman—Direct

Q. Is the Savol Company a corporation? A. It is not.

Q. Partnership? A. Partnership.

* * * * *

Q. How long have you been with the Savol Company? A. January 1, 1946.

Q. And how long has the company itself existed?

(Tr. p. 2744)

A. Some 20 or 22 years before that.

Q. What business is your company engaged in, and what products does it produce or handle? A. We manufacture and distribute bleach water, ammonia, liquid starch, and blueing.

Q. Can you tell us the percent of your company's total business of all products that is accounted for by your sales of liquid bleach? A. About 80 percent.

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(Tr. p. 2754)

Mr. Tincher: Mr. Reporter, may I mark as Commission Exhibit 504 for identification a yellow piece of paper on which I have written the years 1952 through 1957, inclusive.

(Tr. p. 2755)

(The document referred to was marked Commission Exhibit 504 for identification.)

By Mr. Tincher:

Q. Mr. Buchman, I will hand this piece of paper to you and I will ask you if for each year as designated you wrote the gross sales of your company for all products, using, to do so, the annual certified statements that you have with you. Then I will offer this exhibit in camera. It will

be secret. I want just the one figure for each year, the total sales of your company.

And Mr. Buchman, on the sheet which I have marked as Commission Exhibit 504 for identification you have listed various numbers. Will you tell us exactly what numbers you have listed?

* * * * *

The Witness: They are gross sales of all our products for the years 1952 through 1957.

* * * * *

Hearing Examiner Haycraft: Taken from what?

The Witness: Certified copies of our annual report.

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(Tr. p. 2756)

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Mr. Tincher: I offer Commission Exhibit 504 for identification in evidence, in camera.

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(Tr. p. 2765)

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Hearing Examiner Haycraft: We will let Exhibit 504 for identification be received for the sole purpose of showing the total volume of business of this firm during the years 1952 through '57. That can be supported by sworn statements of the auditor which he has in the court room.

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The exhibit will be received in camera.

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(Tr. p. 2775)

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Q. Mr. Buchman, is the liquid bleach produced by your company a household or industrial type of bleach? A. Household.

Q. Do you produce any commercial or industrial bleach at all? By that I mean bleach that is not sold in retail stores for housewives. A. We do.

Q. Approximately what percent of your total bleach sales are this type of bleach?

* * * * *

The Witness: I would say about four percent.

* * * * *

Q. Where is your liquid bleach produced? Where is your producing plant? A. By "producing" what do you mean?

Q. Where do you make it? A. At 433 Park Avenue, East Hartford.

Q. And do you have more than this one location? A. My partner and I own the East Hartford plant. Savol

(Tr. p. 2776)

Bleach is also sold in three other locales, which are selling Savol Bleach, the brand name, but we are no other wise identified together.

Q. Is there any relationship among the four companies at all? A. Only through the fact that we have bought our plants from the same individual who, in turn, limited our area of selling.

Hearing Examiner Haycraft: What did you buy from the same individual?

The Witness: We bought the plants.

By Mr. Tincher:

Q. Are these four separate companies, each selling under the name Savol? A. That's right, sir.

Q. And do you have any relations with the other companies at all? Are you affiliated or a subsidiary? A. Only through the commonness of the label.

Q. What is your sales area for your liquid bleach? A. We have an area identified by contract and map circumscribing the area in which we are limited to sell Savol. Beyond that area we can not sell.

Q. What is that area? A. What area?

Q. Approximately. A. Approximately I would say that it runs Hartford as a central point, an area of about 35 miles radius.

(Tr. p. 2777)

Q. And why is it you can not sell beyond that area? A. The other plants sell Savol Bleach beyond that area in limited areas, too. That is our boundary line.

Q. When you say that you can not, is there a requirement on you, is there some competitive factor?

Hearing Examiner Haycraft: He said by agreement.

Mr. Royall: He said it was a contract between them.

The Witness: We can't sell Savol Bleach beyond that limit.

Hearing Examiner Haycraft: As I understand, you bought the plant from somebody who put those restrictions on you; is that right?

The Witness: That's right, sir.

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(Tr. p. 2779)

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By Mr. Tincher:

Q. Mr. Buchman, do you advertise your liquid bleaches? A. We do some.

Q. What media of advertising do you use? How do you do it? A. We use cooperative advertising.

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Solomon S. Buchman—Direct

(Tr. p. 2780)

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Q. Do you have a cooperative advertising allowance to your customers? A. We do.

Q. How much is that allowance, sir? A. Five percent.

Q. Do you use any—— A. Proof of advertising must

Q. Do you use any television or radio? A. We have, be shown.

and discontinued it.

Q. Why was it discontinued?

* * * * *

The Witness: It has become too costly.

By Mr. Tincher:

Q. Do you use any magazines? A. We do not.

Q. Do you use any newspapers? A. We do not.

Q. Have you used any of these other types of advertising in recent years, newspapers, magazines? A. Not magazines. Newspapers.

Q. How about radio? A. Radio.

(Tr. p. 2781)

Q. Of the ones you mentioned you used, which is the most effective for liquid bleach? A. For liquid bleach?

Q. Yes. A. Cooperative advertising.

Q. Have you had any promotions of liquid bleach; by that I mean have you used such things as price-reducing coupons, special prices, two for one price, free premiums, contests, or anything like that? A. Never.

Q. Do you grant your customers price discounts for quantity purchases? A. In prices comparable to the prices I have given you.

Q. Let me ask you, sir, if a customer may lump together the ammonia and bleach and other products he purchases from you and get a quantity discount on all the products? A. We had deals of one case free with ten on volume.

Q. Is that on liquid bleach? A. Yes.

Q. Why do you use this particular method of promotion? A. If a store is capable of selling ten cases, rather than make two or three trips to that store if we can make it in one trip, it is an expense-saving proposition.

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(Tr. p. 2782)

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Q. What competitors do you have selling liquid bleach in your sales area? A. By name?

Q. By name of producer, yes. A. Clorox Company, J. L. Prescott, Rosex, and then there are a number of small individual packers which just make up a day's work for themselves. They can spring up overnight by the dozens.

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(Tr. p. 2783)

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Q. Do you have a competitor that you consider a principal competitor among the group that you mentioned? A. I think that the principal competitor would be Clorox.

Q. Why is that?

* * * * *

A. Because of the extensive amount of advertising that Clorox does in the field of selling. They have gimmicks, or shall I say, presently they have a tie-in sale with a laundry bag, and then seasonally they have allowances that they give both for advertising and for purchasing. Their advertising, if you go into that, of course they are most everywhere in advertising: magazines, radio, newspapers, et cetera.

Q. Will you tell us what factors your company considers in setting its liquid bleach prices? A. Our prices are set on our labor cost, on our commodity—component parts of the commodity cost, insurance, selling, and competition.

(Tr. p. 2784)

Q. Can you give us a general idea of what your liquid bleach sells for in grocery stores, and what the other liquid bleaches that you have mentioned sell for in the same grocery stores? A. I think the prevailing price of our liquid bleach, a penny more or less, is 34-35 cents.

Mr. Royall: What?

The Witness: 34 to 35 cents.

By Mr. Tincher:

Q. What size? A. For the gallon. The contents of the gallon.

Half gallons, 27 cents. Quarts, 15 cents.

Q. Those are your prices? A. Those are our prices.

Q. Do you know the prices of the other bleaches in the grocery stores of comparable sizes? A. A general knowledge.

Q. That is what I mean. A. At the moment—and we are taking chain store prices because in independent stores they may vary quite a bit—in chain stores the gallon bleach, the gallon Clorox is 59. Presently the half gallon is 31 or 32, and the quart is 18 or 19 cents.

Q. How about the other bleaches, the Prescott Bleach? A. Prescott and Clorox are generally the same.

(Tr. p. 2785)

Q. Has that been true all during the present year? A. I would say so.

Q. Has the Clorox Bleach in your area sold at these prices that you have just given us, this entire year? A. No.

Q. What were the other prices? A. I think they have advanced two cents a gallon—I am not sure about the others, but we will take gallons as a criterion. I think they have advanced two cents a gallon in the earlier part of this year.

Q. Do you mean they were 57 earlier in the year? A. Sir?

Q. Were they at 57 cents earlier in the year? A. I think so, yes. They have also been less than 59 cents in recent weeks, when they had a deal on. I think for a period of about four weeks they had a deal on and they went down to 57, and maybe 55. But the price is back up again now.

Q. You mentioned, I believe, other small companies that sell liquid bleach. Do these companies have their products in grocery stores? A. In a few independent stores.

Q. How do their prices run in comparison with you, if you know? Let me ask you first if you do know? A. Their prices, retail prices, would be the same as ours,

(Tr. p. 2786)

and for some reason or other that is what is happening. But what their selling price is I don't know.

Q. Do you manufacture bleach completely, sir, or do you convert bleach concentrate into liquid bleach? A. We convert.

Q. Have you ever considered manufacturing rather than converting? A. We have.

Q. And what is the reason why you did not change to the manufacturing? A. It presents a financial problem which we do not have. It requires some financing and perhaps eventually we may go into it.

Q. Is your bleach a sodium hypoclorite solution? A. It is.

Q. What percent solution is it? A. We have it marked at 3½. It runs about 3¾. Between 3½ and 3¾.

Q. Are there any other liquid bleaches being sold in your sales area, to your knowledge, that are 3½ rather than the 5¼ percent? A. I think we are the prime factor in 3½ bleach. There are one or two others that sell 3½ percent, yes.

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(Tr. p. 2790)

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Q. Does your company have any difficulty obtaining shelf space for your liquid bleaches? A. That is a constant battle. That is one of the reasons we like to sell and deliver bleach at the same time. Oftentimes our competitor has and, by virtue of the agreement or arrangements with the store managers, we have only a very short space with him. It is a matter of fighting the way in.

* * * * *

Q. If I may rephrase my question, in attempting to get your shelf space what do you do in order to accomplish that objective? A. By having salesmen who are congenial, cooperative with the store managers and in getting into their good graces.

Q. Does the bleach of your company have any unique or special

(Tr. p. 2791)

ability that aids it competitively?

* * * * *

A. Not particularly. I think all bleaches are about the same.

By Mr. Tincher:

Q. What percentage of your bleach that is sold to the housewife is sold in grocery stores as distinguished from

dry goods stores or retail or drug stores, stores of that nature? A. They are all sold in grocery stores.

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Q. Is your liquid bleach sold freight or trucking prepaid to the customer? A. We sell our bleach delivered to the store.

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(Tr. p. 2792)

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Q. You mentioned that you had experience in the grocery business. What type of experience did you have? A. All types.

Q. Sir? A. All types.

Q. By that I mean what positions? A. I have held positions in the grocery store from—in the chain stores from delivery boy to clerk to manager, to efficiency manager. That is during my term of schooling. Upon graduating from college I entered the Cooperative Grocers Association known as the Home Circle Stores in Hartford, of which I was its general manager for a period of 16 years,

(Tr. p. 2793)

doing buying, advertising, and general managership of the plant for 135 stores.

Q. And grocery stores are the competitive problems involved in selling soaps, cleansers and detergents; are those problems any different than they are basically in selling liquid bleaches?

* * * * *

A. I don't think so. I think they are all comparative.

* * * * *

Q. Do advertising and various promotional activities have any effect on the amount of grocery store shelf space

that will be made available to the product that is being tested? A. Very definitely.

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Q. Will you explain why that is?

* * * * * *

A. The manager of the store will take the line—I say the manager and the owner, in my last 16 years of grocery business business was with individual owners—will take the line of

(Tr. p. 2794)

least resistance, and display and sell the item which the housewife comes in and calls for.

By Mr. Tincher:

Q. What has that to do with whether a product is being promoted and advertised? A. I don't get the question?

Q. I am asking you, the answer you have just given us that the grocer will display what the housewife calls for, what does that have to do with whether or not the product is advertised or promoted? A. The housewife demands it.

Q. Is the advertising of your company extensive enough to allow your company to receive any discounts when it advertises? A. No, sir.

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Q. Does your company have any radio or TV programs? A. Now? No. We do have a cooperative advertising that is music in the store, that is broadcast over a local FM station. It is broadcast in the store and to the home. But that is the only tie-in between radio and ourselves.

Q. Is that one chain involved or one store or what? A. One chain.

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Solomon S. Buchman—Direct

(Tr. p. 2796)

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Q. In what section of the grocery store in your area, sir, are liquid bleaches generally found? A. Generally in the soaps and powders division; cleaning division.

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(Tr. p. 2797)

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Q. Is your liquid bleach sold in large grocery chains? A. It is.

Q. Do you have any idea what percentage of your grocery sales are in chains as contrasted to independent stores? A. Well, sir, what do you constitute a chain?

Q. Let me ask you for your own definition first. A. My own definition of a chain is where there are five or more units which have a central building and a central payment. On that basis I would say that our chain stores business would amount to about 60 percent of our sales.

Q. Is your concern producing liquid bleach at full capacity? A. It is.

Q. How many shifts a day are you working? A. One full shift a day. We have a night shift that loads and unloads trucks. The day crew manufactures.

Q. On your existing machinery that you now have, could you

(Tr. p. 2798)

produce more liquid bleach if you had need to? A. We could.

Q. Since 1952 have the costs of production and distribution of your liquid bleach increased? A. Materially.

Q. And have you passed on all of these increased costs to your customers? A. No.

Q. Will you tell us why you have not?

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A. We haven't done it because of a number of factors. Labor in our particular market has gone up by leaps and bounds, since we are considered a critical area. Where we in Hartford were paying "X" number of dollars, a similar manufacturer thirty miles or thirty-five miles away from us paid almost half that for their labor.

No. 2, it seems as though the flint glass, the cost of flint glass always went up before amber glass as an industry, pricewise, and we had to hold off to see what the competitors might have done.

On a local basis there are competitive factors in the automotive business such as gas, for example. In our town we have had conditions where gas was being sold nine cents below outlying towns, and without warning, although we

(Tr. p. 2799)

would pace our delivery cost on that, without warning, without notice, gas would take on the nine cents and suddenly our price would go up where we can't reflect it on our prices on a temporary basis.

Q. Is that gasoline? A. Gasoline. That is for delivery purposes.

There are those factors that enter into it. And oftentimes—one rise, I recall, that we held off better than a year before we went up because competitors were not going up.

Q. Do you make any effort to maintain any differential between your price and the price of the liquid bleach of competitors? A. There is a difference between them in price and certainly we can't begin to sell at the same price that Chlorox and Dazzle might be selling at. One factor, there is a difference in the percentage of bleach.

Secondly, the advertising, the extensive amount of advertising that is done by our competitor makes it almost a household word. We have to give them more than the quality in the product that they expect for less money.

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(Tr. p. 2800)

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Q. Are you familiar with the fact that the Chlorox Chemical Company was acquired by the Procter & Gamble Company in August of last year? A. I am.

Q. What effect, if any, will this acquisition have on the business of your company in the future?

* * * * *

A. Frankly, we have learned to live with Chlorox. As an individual I am a little bit apprehensive if Procter & Gamble goes on with the method of advertising, method of sampling, method of coupons, and the method of sales that they have used with Procter & Gamble products, both to the wholesaler and to the individual stores, of what they may do to the bleach business.

Again, I am speaking as an individual. We have a little business. We are trying to get along. We are not trying to coop in or take in the entire world. We are making a living. If and when the advertising, if Procter & Gamble would go out with advertising such as they have with other of their products, it would take very little to put us out of business because there isn't enough of a spread or a profit that we are making.

And that is the thing that troubles me a little bit,

(Tr. p. 2801)

and I can't help but be a bit apprehensive of it.

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(Tr. p. 2805)

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CROSS-EXAMINATION

By Mr. Royall:

Q. Mr. Buchman, I want to ask you just a few questions. You said, I believe, that there were three other Savol companies? A. That is right.

Q. Where are they located? A. One is in Milford, Connecticut; another in Albany, New York; and the other is in Clinton, Massachusetts.

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(Tr. p. 2807)

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Q. You mentioned some individual bleaches in your testimony this morning, in addition to referring to a number of others. Do you recall the Carrier Bleach Company? A. Yes, I do.

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(Tr. p. 2808)

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Q. Do you know Ideal Bleach? A. I do.

Q. Do you know the Star Water Bleach? A. I do.

Q. Are their plants in your territory or do they distribute in your territory? A. They do.

Q. Are the plants there, too? A. Going back to Carrier——

Q. That is in Chicopee, Massachusetts? A. That's right.

Q. That is not in your territory? A. It covers so minor a portion of our territory, that I don't consider them a factor.

(Tr. p. 2809)

Q. Ideal is in New Haven, is it not? A. That also is on the fringe areas of our territory.

Q. And Star Water? A. It is a factor but not too great a factor.

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(Tr. p. 2810)

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Q. Are you familiar with the private label brands of bleach sold by J. L. Prescott Company in your area? A. I am aware of the fact that J. L. Prescott do pack private labels. For whom they are packing, I do not know.

Q. Is Bright Sale made by Prescott sold in your territory? A. I am not admitting the fact that Bright Sale is packed by Prescott, because I don't know.

Q. Is Bright Sale sold in your territory? A. Yes, but it is a very minor factor.

Q. Is Stop and Shop sold in your territory? A. It is.

* * * * * *

Q. In addition to the prices of the various sizes of your bleaches that you mentioned this morning, is there also a two-cent payment which you refund if the bottle is given back? A. That is included.

Q. That is included? A. That's right.

Q. Is that true for all size bottles? A. No, sir.

(Tr. p. 2811)

Q. The amounts differ? A. What is that?

Q. The amount of refund is different? A. The amount that includes is different, too.

Q. I understand. It varies for the sizes? A. The quart bottle is two cents; the others are different.

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(Tr. p. 2812)

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Q. Do you buy at any time any used bottles? A. We do.

Q. From whom do you buy them? A. We rebate the grocer for these used bottles.

Q. I mean any besides your bottles that you put out. Do you buy them from other people? A. We may buy them from syrup houses, Coca Cola, the like of that.

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(Tr. p. 2814)

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Q. You spoke this morning about some organization that broadcast and had some other activity in one of the chains to which you sold. Was that Storecast? A. Yes.

Q. Storecast represents you—represents other products, does it not? A. Yes.

Q. And it is an organization that operates for that purpose

(Tr. p. 2815)

of representing various products? A. I believe so.

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Q. How long have you been a member? A. Of Storecast?

Q. Yes. About three years?

(Tr. p. 2816)

A. Oh, more than that.

Q. More than that? A. Yes.

Q. And you are still a member? A. Yes.

Q. Are you familiar with the services they render? A. I am.

Q. And you described some of them this morning, I believe, briefly. What do they do? What other things do they do?

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A. They tend to broadcast spot announcements during the day, and they also fill in with music in between times

to take up the time. Their representatives cover the stores that are included in this program and see to it that we have appropriate and proper spacing of merchandise, and in instances where the shelves are not filled they are supposed to fill the shelves. And that is about it.

Hearing Examiner Haycraft: You are talking about representatives of Storecast?

The Witness: Of Storecast.

Hearing Examiner Haycraft: Where do they get the

(Tr. p. 2817)

goods to fill the shelves?

The Witness: In their over-stock of the stores.

(Tr. p. 2818)

By Mr. Royall:

Q. They also follow through on these matters, of shelf space and so forth, and follow up to see whether it is being done? A. They are supposed to do that, yes. But being that our men cover the stores once a week, there is little if any of that that they have to do.

Q. Do you pay them? A. Do we pay them?

Q. Do you pay Storecast? A. Yes.

Q. In what territory do you employ Storecast or contract with Storecast to cover? Just the territory you cover? A. That is right.

Q. Do you happen to know who uses Storecast on bleach in adjoining areas?

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Q. In addition to these, may I ask you about one or two other matters, please. Do they make reports to you from time to time on their various activities? A. A mimeograph report, yes.

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(Tr. p. 2819)

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Q. Do you know how many radio spots they have a week? Do they not guarantee you fifty? A. No.

Q. You don't know how many they have? A. I don't know. This contract has been renewed from year to year, and I should know, but during the week I think we have somewhere in the neighborhood of 20.

Q. I believe, but I am not sure, that I heard you correctly this morning. You made some reference to a deal which resulted in the reduction of price for a period, charged by Chlorox and Dazzle, did you not?

Did you say the price was reduced for awhile? A. There is a seasonal price that is made in the spring and the fall of the year. That I am not quite sure of. But it is somewhere in that neighborhood.

Q. Did you know of any deal made by Chlorox during this recent period? A. Yes.

Q. What was the date of it and what was the nature of it? A. As far as the date is concerned I could not tell you. But I know there was a period of a month that it held, and it was my understanding there was a ten cent count and recount deal and a ten cent advertising deal.

(Tr. p. 2820)

Q. Are you certain about that? A. Am I certain?

Q. I am not trying to mislead you. Are you certain of that? A. I would say fairly certain, sir.

Q. Would this remind you: Wasn't that a Dazzle deal instead of a Chlorox deal? A. No, sir; it was not.

Q. And you say Chlorox had one then, is your impression? A. I am fairly certain of that, sir.

Q. What period did that occur in? Approximately what period did that occur? A. All I can tell you at the moment is the most recent one.

Q. That is what I am asking you about. The one you spoke of this morning. A. The most recent one would be in the spring.

Q. Of this year? A. Of this year.

Q. All right, sir.

I would like to make a request of you. If you want to investigate that further and find that you made an error in it, will you notify your counsel? A. I will do so, sir.

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(Tr. p. 2821)

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Q. Did you mention this morning a supposed or alleged Chlorox deal with any manager, or did I understand you incorrectly? A. I still don't understand the question.

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Q. You didn't refer to any deal that Chlorox made with the manager, did you? A. No, sir.

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Q. Do you occasionally give free goods at store openings? A. Yes, sir.

Q. You do? A. Yes, sir.

(Tr. p. 2822)

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REDIRECT EXAMINATION

By Mr. Tincher:

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Q. Why do you use used bottles at all? A. Why? As I have stated, there is a price advantage.

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(Tr. p. 2824)

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Q. Why do you use Storecast rather than doing this work which Storecast does for you, doing that yourself?

A. In a small way I think it does a job. I think that the fact that it has the several announcements during the day of Savol Bleach might hit the housewife either at home or in the store, if she is listening to FM.

Q. Does Storecast promote or create a situation where you can participate in any type of promotion, such as contest or free samples or packages free if you purchase the larger package, or anything of that nature? A. I don't know.

Mr. Royall: You don't know?

The Witness: I don't know, and I don't believe

(Tr. p. 2825)

they do, because we would be offered the same thing as everybody else.

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Q. Is there any reason why Storecast wouldn't be available to anybody who wants to use it? A. It is available.

Q. I believe you said, and correct me if I am wrong, that you get about 20 spots a week on radio from Storecast? A. What is that?

Q. Did you say you got about 20 radio spots a week through Storecast? A. To my best belief, I think that is what it is.

Q. Can you tell us how long those spots are, sir? A. Long enough to incorporate about 25 words.

Q. I was trying to pin it down, if you know, and perhaps you don't, whether it is a ten second spot, half a minute spot, a minute spot, or any other period of time, if you know. A. It is nearer 10 or 15 seconds.

Q. Do you have any control, sir, over the time of day or night that these spots will appear? A. Yes. We have

designated the weekend and the wash day, Monday and Tuesday, when we get the bulk of the announcements.

Q. I don't think I have made myself clear, sir. By that I mean do you ask for certain times of the week or the day for

(Tr. p. 2826)

your spots to appear? A. It is all through the week. But it is concentrated on a Monday or Tuesday.

Q. Is it concentrated at your request, sir, or is it just given to you that way? A. At our request.

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(Tr. p. 2843)

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Room 410
United States Post Office Building,
121 Ellicott Street
Buffalo 3, New York

June 16, 1958

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2845)

PROCEEDINGS

* * * * *

Rexford A. Gardiner

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you give your full name, please?

The Witness: Rexford A. Gardiner.

* * * * *

Rexford A. Gardiner—Direct

DIRECT EXAMINATION

By Mr. Tincher:

(Tr. p. 2846)

Q. What is your occupation, Mr. Gardiner? A. I am the President of the Gardiner Manufacturing Company.

Q. And how long have you held that position? A. Since October, 1951.

Q. And as President, what do your duties encompass? A. Well, my duties are inclusive of practically everything in the operation of the manufacturing and the administrative.

Q. All right. And would you tell us what business activity the Gardiner Company is engaged in? A. We manufacture a sodium hypochlorite bleach; a dry bleach and a detergent, which are for resale in the stores.

Q. And how long has your company been engaged in these activities, sir? A. We have been manufacturing a liquid bleach since 1920. And we have manufactured dry bleach for about a year or so; and the detergents for about three.

Q. And were you associated with the company prior to becoming president? A. Yes, I was.

Q. How long altogether have you been with the company? A. Almost the entire life of the company.

Q. All right, sir, approximately what percent of your company's total business is accounted for by the sale of liquid bleach? A. Well, I would say about 90 percent.

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(Tr. p. 2848)

Q. Now, let me hand you Commission's Exhibits 510-A and B for identification and I will ask you if you would tell us what that is and who prepared it. A. This was

prepared by my bookkeeper, and these are the sales figures for the liquid bleach from 1952 to 1957, inclusive. This is broken down into the sales per gallons, half a gallons and quarts; and also back in '52 we had a 24 ounce bottle and carboys, which are the five gallon containers.

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(Tr. p. 2849)

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Mr. Tincher: I offer the document, sir——

By Mr. Tincher:

Q. Let me ask you first, Mr. Gardiner, is your Gardiner Manufacturing Company, Inc.—is that a public corporation? A. We are incorporated, but I hold all the stock.

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Mr. Tincher: It may be placed in camera.

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(Tr. p. 2850)

Hearing Examiner Haycraft: Commission Exhibit No. 510 (a) and 510 (b) for identification may be received in evidence.

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Hearing Examiner Haycraft: In camera.

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(Tr. p. 2851)

Q. Let me ask you, sir, what the language "101" refers to? A. 101 is our trade name of our product under which it is sold.

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(Tr. p. 2853)

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Q. I hand you Commission's Exhibit 512 for identification and ask you who prepared and what it is and what

the figures thereon include. A. This exhibit is showing our advertising figures in the years 1952 to 1957. These are inclusive of all types of advertising, and our bookkeeping system does not break it down into the various forms in which it was used. This was prepared under my direction.

Q. Does the exhibit include promotions as well as advertising? A. This does not include promotions. That is just advertising, newspaper, radio and television.

(Tr. p. 2854)

Q. All right, sir. A. Coupon and other things of that nature.

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Q. Well, just to make sure I understand you, sir, I'm a little confused, it does include such things as couponing? A. Yes.

Q. The cost of that? A. Yes, but when I say deal, I mean one free with ten or any such thing as that, which is given to the trade.

Q. Would not be shown on here? A. Yes, that is not in there.

Mr. Tincher: I offer Commission's Exhibit 512 for identification, sir. This should be In Camera.

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(The paper referred to, heretofore marked for iden-

(Tr. p. 2855)

tification Commission's Exhibit 512, was received in evidence.)

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(Tr. p. 2857)

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Q. Now, Mr. Gardiner, is the liquid bleach produced by your

(Tr. p. 2858)

company sold in grocery stores? A. Yes, it is.

Q. Do you have any industrial liquid bleach that you sell? A. No, we don't.

Q. And where is your liquid bleach produced? A. It is produced 160 Van Reseler Street, Buffalo, New York.

Q. And you have only the one production plant? A. One plant.

Q. And will you tell us, Mr. Gardiner, the sales area in which your liquid bleach is sold? A. Western New York and Western Pennsylvania. We ship to Erie, Pennsylvania, Bradford, Pennsylvania, Olean, Rochester, and Niagara Falls; in between those areas.

Q. And what, if anything, sir, determines the extent of your sales area? A. Well, I figure that it is what is considered the Buffalo marketing area, plus the fact that if you go, say, around 150 miles with it, I figure it is not worthwhile.

Q. Why is that, sir? A. Well, the freight rates are such that I can't get decent enough freight rates to make it profitable to ship it to that distance.

Q. All right, now, when you do ship, sir, do you use public carriers or do you use private trucks?

(Tr. p. 2859)

A. Yes, we do—well, we use trucking companies. We have no trucks of our own.

Q. Now, your other two products, your dry bleach and your detergent, are they sold in the same sales area as your liquid bleach? A. That's correct.

Q. Are they sold to the same customers? A. That's right.

Q. I believe you have already testified, have you not,

sir, that you sell through brokers? A. Yes, we use a broker entirely for our sales.

Q. Do you have any sales force at all? A. None of our own; no other than myself, which is very seldom that I go out.

Q. Now, will you tell us, sir, as briefly as possible, how you advertise your liquid bleach and how you have for the last three or four years, if there has been any change? A. Well, most all of our direct sales—or advertising, has been done through radio, some through television. Our newspaper advertising is—has been almost exclusively co-operative with ads. What I mean by that is that the chain or the store that is advertising, prints our ad and we pay them for it. We have a regular advertising contract which they use.

Q. Do you have any idea how much per case that advertising

(Tr. p. 2860)

by the chains runs? A. No, I don't, because we—our advertising contract is based on one column inch per month in which we pay them the national line rate and 10% extra if they use one of our cuts.

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Q. All right, now how else do you advertise? A. We use Beam Cast in the A & P store——

Mr. Royall: Wait a minute, I didn't understand that.

The Witness: Beam Cast in—not A & P, that is Loblaw and Nu-Way.

Hearing Examiner Haycraft: What is a Beam Test?

The Witness: Beam Cast, sir.

Hearing Examiner Haycraft: Beam Cast, what does that mean?

The Witness: It is an in-store broadcast. It is an FM radio program which beams music into the store, interspersed with commercials, and these commercials, you buy them at so much a month. With that service you get one display, I

(Tr. p. 2861)

believe it is each quarter; you get a display in the store and the Beam Cast Company has girls who check the in-stock position of your merchandise in the store, see that it is priced correctly and that—we have as good a location as we can possibly get. That is only in these two chains. In the Nu-Way chain, it is the only one that handles the liquid bleach. The Loblaw group, we are not on for the liquid there.

Q. We are not what, sir?

Hearing Examiner Haycraft: Not on the beam.

Q. Let me ask you, sir, in the Nu-Way store where your liquid bleach product is beamed, how many liquid bleaches can participate in the program? A. Only one. They do not take competitive products. Of course, on the liquid bleach also they do not display it because the stores, the chain stores, will not display a liquid bleach because of the danger of breakage.

Q. Have you ever received any displays from the chain? A. What is that?

Q. In view of that answer, has your company received any displays from the chains on liquid bleach? A. No, I don't think so. If we have it has just been a display that some manager put up by himself, without any authorization from headquarters.

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(Tr. p. 2862)

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Q. All right, sir, now how about television? Has your company done any television advertising? A. We have two spots at the present time, WBEN, which are called ID spots; they are ten second spots.

Q. Now, have you had any radio advertising of your own, above and beyond the beamed program; the beamed cast? A. On radio?

Q. Yes. A. Yes, we do.

Q. And is your advertising on either radio or television sufficient to earn a discount for you? A. No.

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(Tr. p. 2863)

Q. All right, sir, would you tell us now how your company at the present and in the past three or four years, has promoted its liquid bleach? A. We have promoted through some direct mail couponing. A few years back we did more of it than we are doing at the present, because of the expense of it. It has become too expensive so we have had to cut it out, more or less. We did one mailing last year in the Erie and Southern tier—what is called the southern tier of New York, in that area, to try and help our business there.

Q. What time of the year was that, sir? A. I believe that was in the early Spring, if I am not mistaken.

Q. Had you completed your answer, now sir, about the way you promote? A. Well, our other promotions, we have done, we have put on a deal where we have sold one free with ten. We have done that twice in the past year.

Q. What is the reason for using that particular promotion, sir?

* * * * *

A. We try to get a little extra business. Also, to meet some of the competitive situations which are on the market.

(Tr. p. 2864)

And that deal is for the entire trade.

Q. Now, these various promotions that you have just testified about, sir, are they any aid in increasing the sales of the bleach product?

* * * * *

A. Yes, they are at the time and we hope that they have a little more far reaching effect, that they will still aid us in the future, after the deal.

Q. Now, we have put in a price schedule for your liquid bleach, sir, does your company allow any discount from that or have any discount structure? A. We allow 2% ten days, net 30. That is the only discount that we allow.

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(Tr. p. 2866)

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Q. Would you tell us, Mr. Gardiner, from your experience in the liquid bleach business, what factors determine the success or the failure of your liquid bleach?

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A. Well, I think it is entirely promotion. You have to advertise and keep your product in front of the people and that is it, I think, the biggest factor; the continuous advertising campaign, because although we are the, as we believe, the first in the bleach business of this type, we did have this market at one time 100% and we have slipped way

(Tr. p. 2867)

down from that position and I think it is purely and simply through a continuous advertising, which for some years we were unable to do.

* * * * *

Q. Now, would you tell us, sir, in setting—let me ask you first, who determines the price that your company will charge for its liquid bleach? A. Well, Clorox actually determines the price. They have sold—we have sold a little bit higher than they do. In fact, we are higher priced than they are today, actually.

* * * * *

Q. What are you charging today, sir? A. Well, we charge on our half a gallons and gallons, the same price. On the quarts they are selling 10¢ under us in the Erie market.

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(Tr. p. 2868)

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Q. Let me ask you, what are you selling it for in the Erie area at the present time; quarts? A. $2.01.

(Tr. p. 2869)

Q. And how long have you been charging that price, sir? A. If I can look to tell you the date—do you want—it is this year. I mean I have it in my notes as to when we changed our price.

Q. Yes, why don't you look, sir.

(At this point the witness referred to a document.)

A. Well, they didn't put it down. That is one thing I must have missed in my checking. Our price was changed, if I remember right, in February of this year.

Hearing Examiner Haycraft: You mean it went up at that time?

The Witness: Yes.

By Mr. Tincher:

Q. And what is the preceding price that you had been charging, the latest price to appear on the price list we

put in the record here today? A. That was the price as of the end of '57.

Q. Now, do you use any brand names besides "101"? A. No, 101 is our only name.

Q. Do any of your products besides the bleach, compete with any products of the Procter and Gamble Company, sir?

* * * * *

A. Our liquid detergent

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(Tr. p. 2870)

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Q. All right, sir, does your company manufacture its bleach or convert bleach concentrate to liquid bleach? A. We manufacture our own bleach.

Q. Is it a sodium hypochlorite solution? A. Yes, it is.

Q. And what percent, sir? How strong? A. Five and a quarter percent.

Q. And what basically is the remainder of the product? A. It is inert.

* * * * *

Q. And are you familiar with the other liquid bleaches sold in this area? In your sales area, sir? A. I am with a few of them, yes. There are so many that we don't know about that are made and delivered house to house that we can't keep up with them.

Q. Well, the ones that you know about and are sold in grocery stores, do you know the percentage of sodium hypochlorite that is in them?

(Tr. p. 2871)

A. I believe the Clorox is five and a quarter also. And

Sunny Sol, I believe, is the same. I may be mistaken on that, I haven't looked at it for some time.

* * * * *

Q. Mr. Gardiner, are you familiar with the various promotions used in the soap detergent and cleanser industry to sell products such as contests, free premiums, two-for-one-sales, small size free with the purchase of a large, a group of products offered on a special promotion in reduced price, prices off labels and all those promotions? A. Yes I am.

Q. Is there any reason why any or all of these promotions couldn't be applied to liquid bleach?

* * * * *

A. No, there isn't. I know why I can't do it, though; it is too expensive as far as I am concerned.

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(Tr. p. 2872)

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Q. Now, sir, will you tell us how your concern goes about obtaining shelf space for its liquid bleach? A. Well actually, we can't do much to obtain it. It is just—you have to take more or less what they give you. They will put it on the shelf.

Hearing Examiner Haycraft: What are you talking about when you say they?

The Witness: The storekeepers.

Hearing Examiner Haycraft: Retail stores?

The Witness: Retail stores, yes, sir.

Hearing Examiner Haycraft: All right, go ahead.

A. The retail stores, they will just give you as much space as they see fit and it doesn't do much good to ask for anything more because they won't give it to us.

Q. Well, how many liquid bleaches are carried in the general stores in your areas, sir? By general I mean the average, if there is such a thing, maybe there isn't. A. Well, in this area I believe your chain stores, which are perhaps the biggest factor in our market carry, I think, about three types of bleach; that is three different makes.

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Q. What are those makes, sir?

(Tr. p. 2873)

A. 101, Clorox, and either Private Label or Sunny Sol. They vary as to different groups.

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Q. Do they carry all sizes of these various brands? A. Most stores carry all sizes of 101, Clorox; and of the other brands it is sometimes only one size, sometimes more.

Q. Now, does 101 bleach have any unique or special ability or property which aids the—— A. No, I don't think so.

Q. And the same question with respect to the other liquid bleaches in your sales area? A. As against Clorox I would say we are no different. As to the other types, they vary in strength. They are generally not uniformly made.

Q. Now, which ones are you speaking of now, sir, the ones you spoke of as being——. A. These private brands and some of the other makes are not consistent as to their strength.

Q. Now, do you know what percent of your grocery store business in liquid bleach is sold to chains as contrasted to independent grocers? A. I would say about 51% of our sales go into the major chains. We have independent chains in this area which we cannot break down as to their sales.

Rexford A. Gardiner—Direct

(Tr. p. 2874)

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Hearing Examiner Haycraft: I don't understand the answer. He says 51% and then he says he can't break it down.

The Witness: I said in the independent chains; we also have independent chains.

Hearing Examiner Haycraft: Well, that would be the 49%?

The Witness: Yes.

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By Mr. Tincher:

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(Tr. p. 2875)

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Q. Do advertising and promotions such as the various promotions that you have spoken of that your company uses, do those have any effect on the amount of shelf space that you are able to obtain for your bleach? A. I don't think they have much effect on it at all; very little, if any.

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(Tr. p. 2877)

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Q. Does your company do any test marketing in local communities or areas? A. No, because we are—all of our sales are conducted in Western New York and Western Pennsylvania, and we can't test market in any one area without going into the other area. We can't segregate.

Q. Have you been in this same sales area—or, for how long in the same sales area? A. We have sold in the same sales area since about 1921-22.

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Q. In what sections of the grocery stores in your sales area are the liquid bleaches generally found? A. In the cleansing department, where they have other cleaning items.

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(Tr. p. 2878)

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Q. Do you have any scientific research facilities? A. Directly, no. We hire that done, or use one of the chemical companies which we purchase supplies from.

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Q. From your company's experience, is the production of liquid bleach a very technical process? A. No.

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(Tr. p. 2879)

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Q. Can you tell us, sir, at approximately what prices they are being sold on the retail grocery shelf at the present time in your retain sales area? A. Gallons are normally running around $.57 a gallon. Our half gallons are around $.39—$.37, and the quarts are around $.20. I say around——

Hearing Examiner Haycraft: Twenty-what?

The Witness: Twenty cents. I say "around" because of the various markups to the different stores.

By Mr. Tincher:

Q. Those are your prices? A. Yes, sir.

Q. Do you know the prices of the Sunny Sol and the Clorox? A. Clorox ranks the same, and Sunny Sol is normally one to two cents less.

Q. Is this the current price structure you have just given us?

Hearing Examiner Haycraft: That is the way the question was framed. The original question was so framed.

By Mr. Tincher:

Q. These prices that you have given us for the various

(Tr. p. 2880)

companies—has there been any significant change in that price structure in the last three or four years? A. Yes. The prices have gone up consistently. I mean, almost every year there is a price increase because of the cost of raw ingredients, in bottles and labor.

Q. Is your company producing liquid bleach at full capacity, sir? A. No.

Q. And approximately what percent of capacity is being used? A. I would say we are perhaps 30 percent capacity.

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Q. You just mentioned the cost of production having gone up in recent years. Have you passed all these costs on to your customers? A. Not all of them, no.

Q. What determines when you will or what amount you will pass on?

(Tr. p. 2881)

A. We have to more or less follow Clorox's price structure.

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Q. Mr. Gardiner,

* * * * *

are you familiar with the fact, sir, that the Procter and Gamble Company of Cincinnati acquired the Clorox Chemical Company about August 1 of 1957? A. Yes, I am.

Q. Let me ask you, sir, what effect, if any, this acquisition will have on the business of the Gardiner Company.

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The Witness: Well, I am scared of it, definitely, because of their larger capacity, purchase, advertising matter—makes it that they can cover the trade at a much lower cost than I can. They have a much larger sales force, which is selling their other products, which can also promote the Clorox. The entire business really scares us because of the possibilities of what could happen.

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(Tr. p. 2888)

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CROSS EXAMINATION

By Mr. Royall:

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(Tr. p. 2889)

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Q. Mr. Gardiner, you mentioned that there were a number of other packers' labels in this area. I would like to hand you a list of these, a list entitled, Exhibit 24 and ask you if on there are some of the package labels in your area.

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(Tr. p. 2890)

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The Witness: Yes, I have heard of some of these.

By Mr. Royall:

Q. Can you tell us which ones you have heard of? A. I have heard of La Stella, Sunny Sol, Radiant, Mali's—but they are not a manufacturer that I know of—I have heard No-Boil, and I believe there was Sno-EE some years ago. Whether that is the same referred to here, I couldn't possibly say.

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Q. Mr. Gardiner, I also show you Respondent's Exhibit 25 for identification entitled, "Private Label Liquid Bleaches Sold in Western and Central New York Area," and ask you if you know those, and, if not, which of those you are familiar with.

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(Tr. p. 2891)

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A. The only two here that I have heard anything about is Bright Sail, which is the A & P, and Speed Up, which is the American Stores. The others, I don't know anything about.

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(Tr. p. 2893)

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Q. Do you manufacture, or did you at any time manufacture a two and a half percent bleach? A. Yes.

Q. When did you finally terminate the manufacture of any such bleach. A. I believe it was in 195[redacted] or possibly '53.

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(Tr. p. 2895)

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Q. Now, have you used Hooker Electrochemical Company for advice and counsel in connection with your product? A. Yes.

Q. And you have been dealing with them for many years, have you not? A. Yes.

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Q. Yes, sir. Now, you spoke of some couponing, referring to some you had don in the early part of last year. Was that done through an independent company? A. Yes.

Q. You also spoke of free goods. Have you used that more or less continuously for the last several years? A. What do you mean by continuously?

Q. I don't mean all the time, but from time to time during

(Tr. p. 2896)

the last several years? A. Yes, we have used it as—for the last few years.

Q. You spoke of radio. Did you not have a five minute radio news program in about 1956 or 1957? A. No, I don't believe we sponsored the news broadcast. I think we just took a spot of it if I remember correctly. Now, I may be a little wrong on that but I don't recall having a whole broadcast.

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(Tr. p. 2897)

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Q. You know Clorox put a new handle on the bottle, don't you; on the quart bottle? A. Yes.

Q. And didn't they increase their price on that bottle with the new handle, in Buffalo in January, 10¢ a case? A. I believe that increase was before January, wasn't it? Or at least they came out with it in November or December, I think it was when I first heard about it. Exactly when it went into effect I don't know.

Q. Well, wasn't it the time the new handle was put on the bottle? A. It might have been around that time.

Q. Yes.

Now, at that time, or shortly thereafter did you raise your price on quart bottles 10¢? A. Yes.

Q. And did your bottles have a new handle?

(Tr. p. 2898)

A. No, they didn't.

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Q. Do you know that the quart bottles of bleach with the new handles has, since the end of 1957, been sold in Erie by A&P or Loblaw or Nu-Way and that the 10¢ price is added to it? A. No, I don't know that as a fact.

Q. You don't know that. And do you know that in those places in Erie where the old bottles without the new handles on the quarts is sold that they still have the lower price without the 10¢ raise? A. I know there is a lower price but I don't know what bottle it is on.

Q. Yes, sir. But you charge in Erie a 10¢ raise, do you not? A. That is correct.

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Q. Have you advertised since about 1955 in a Rochester grocer's CoOp magazine? A. I believe we have.

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(Tr. p. 2900)

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Q. I believe you testified that you subscribed to Beam Cast? A. That's correct.

Q. As far as it is related to Nu-Way store; is that correct? A. Yes.

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Q. Now, are you familiar with the practice of Beam Cast, pasting space reservers on the shelves, under their contract? A. I know they put them up but they are not pasted; they are moveable.

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(Tr. p. 2903)

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REDIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Gardiner, you told Mr. Royall that Bright Sail gets considerable shelf space in A&P? Let me use the same word "considerable" and ask you if Clorox gets considerable shelf space in A&P? A. Yes.

Q. Will you tell us why you changed from 2½% bleach to a five and a quarter percent bleach? A. The competition was such that it was all out in five and

(Tr. p. 2904)

a quarter percent and we had to change because the public demanded it through not buying our product.

Q. All right sir. Now, you have testified in answer to Mr. Royall's question that Clorox has done more advertising than 101 has. Will you tell us why, if there is any reason, you haven't done more advertising for 101? A. I don't feel that we could afford to do more advertising. We are putting in all that we feel we can afford to put into it and we just can't spend any more money.

Q. Now, Mr. Royall asked you if an independent company did the couponing for you; do you recall that? A. Yes.

Q. Will you tell us why you have had an independent company do the couponing rather than do it yourself? A. The reason why we had the independent company is that they could do it cheaper than we could by putting more than one coupon in an envelope; they put one of ours plus some other manufacturer's and that way we split the postage.

Q. And when you do that do you have any control over what other manufacturer would be in with your coupon?

A. No control other than it would be non-competitive.

Q. Do they also handle the redemption? A. No.

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(Tr. p. 2907)

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RECROSS

By Mr. Royall:

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Q. Now, finally, I will ask you if one of the matters covered by your compensation to Beam Cast is not—is that

(Tr. p. 2908)

Beam Cast items should have as many facings, more, if possible, than any competing item? A. Well—rephrase that question, please.

Q. Beam Cast items should have as many facings, more if possible, than any competing item.

* * * * *

The Witness: They attempt to get that space.

By Mr. Royall:

Q. And isn't another of their objectives: if one shelf location is better than another, the Beam Cast item should have the spot that will sell the most? A. Yes.

* * * * *

REDIRECT EXAMINATION

By Mr. Tincher:

Q. Do you have any way of knowing whether the objectives

(Tr. p. 2909)

of Beam Cast are realized or not—the objectives that Mr. Royall has just read to you, assuming that is what the ob-

jectives are? A. The only thing we have is a report that says how many facings we have. That is the only way I have of knowing anything about it.

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(Tr. p. 2912)

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Room 410
United States Post Office Building
121 Ellicott Street
Buffalo 3, New York

June 17, 1958

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2914)

Hearing Examiner Haycraft: Are you gentlemen ready?

All right, this hearing will come to order. You may proceed, Mr. Tincher.

* * * * *

J. W. Jones

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you give me your full name, please?

The Witness: Jones, J. W.

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DIRECT EXAMINATION

By Mr. Deveny:

Q. What company are you affiliated with, Mr. Jones? A. Jones Chemicals, Incorporated.

(Tr. p. 2915)

Q. And what is your position with that company? A. President.

Q. And how long have you been associated with the company? A. Since 1931.

Q. And how long has the company been in business? A. Since 1931.

Q. And what business is this company engaged in? A. In the manufacture and repacking of miscellaneous chemicals and chemical specialties.

Q. And what would some of those specialties be, sir? A. Chlorine, anhydrous ammonia, sodium hypochlorite, and acqua ammonia, and miscellaneous chemicals.

Q. Does your company produce a household liquid bleach? A. Yes, we produce household liquid bleach.

Q. What is your sales area for your chemicals, sir? A. We cover the United States pretty well, except for Texas and the Northwest such as Washington and Oregon.

Q. Now, is that true for liquid bleach sales? A. No, that is not for—you are talking about liquid bleach?

Q. Yes, sir, the household product. A. It is true for the bulk liquid bleach but it is not true for the household product.

In other words, wherever we have any of our locations we are in the bleach business and that bleach busi-

(Tr. p. 2916)

ness is a bulk bleach business.

Q. Well, let me ask you this, sir. In the non-bulk bleach, the household liquid bleach that your company sells, what area do you sell that in? A. That is sold largely out of Caledonia, originally, but we have franchised the Caledonia end to others who manufacture—who bottle it and

come and get it in tank wagons, or we deliver it to them in tank wagons.

Q. Would that be the bulk, sir. The bulk bleach? A. What we deliver, yes. And they are franchised to use our Sunny Sol trade mark.

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(Tr. p. 2917)

Q. Now, apart from that business, sir, does your company sell any actual household liquid bleach, and in what area does it sell that, that alone? A. Yes, in overlapping territories or territories in between areas, which we want to franchise out or have franchised out, we take care of those so-called vacuum spots by selling it ourselves direct through the chain stores or the jobbers, and the only territory of that nature right now is the Utica, Binghamton, Albany area, Norwich, north country.

* * * * *

Q. You produce that where? A. In Caledonia on our own bottling machines, bottle it there in quarts, half gallons and gallons, and ship it on our own trucks to customers in that area.

Q. Now, you mentioned having franchised out some of your production or some of the sales of liquid bleach. When you franchise that trademark, do you have any control or direction over the companies after you enter the franchise agreement? A. No. Our control is purely a quality control in order to safeguard our trademark. We furnish the material,

(Tr. p. 2918)

the concentrate, and they cut it down, and we make periodic checks, not only of the materials at their plant, but also out in the field, as to just how the strength is and the free

caustic of the material, strength of the chlorine, and so forth.

Q. Now, getting back to the household liquid bleach, Mr. Jones, just the household sales, do you advertise this liquid bleach? A. We advertise that in newspapers only.

Q. And how often? A. Generally, every Thursday evening in the evening paper, and if it is a combination, forced combination paper, it would be Thursday evening and Friday morning. Unfortunately, in the area we are in, we are on forced combination deals.

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Q. Do you use any other advertising media other than newspapers? A. Not at present.

Q. Why?

(Tr. p. 2919)

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A. Our volume just won't stand anything more. We can't afford any other form of promotion.

Q. Would that include radio, TV? A. Yes. We used to be on radio, spent a lot of money on it, but we are now on newspapers only.

Q. Is the advertising necessary for the household liquid bleach sales?

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The Witness: Oh, yes. It is absolutely necessary, some kind of promotion.

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(Tr. p. 2920)

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Q. Why do you feel advertising is necessary?

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The Witness: To create consumer acceptance, when she walks down the aisle of the supermarket and picks it off the shelf, that she picks Sunny Sol instead of some other brand.

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(Tr. p. 2921)

Q. Well, in getting the sales figures for liquid bleach that you have testified about this morning, would that be in separate records and books of your company, or where would that be located? A. No, we—we are more or less carrying that along with everything else and bulk it right in because it is more or less as I say, a territory we are going to dispose of as soon as we can franchise it out and it is not something we ordinarily keep separate.

Q. Well, have you an idea what those sales would represent in dollars?

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Q. Well, do you know what the sales are per year of that business? A. Well, I would say they are not more than $100,000 so I

(Tr. p. 2922)

don't think it amounts to too much.

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(Tr. p. 2925)

Q. Now, Mr. Jones, in your household liquid bleach, do you promote that bleach other than advertising? I mean, do you engage in any price promotion or any promotion of that kind? A. No, not at the present time.

Q. And why not, sir?

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A. We just have a small volume existing down there and

we just don't have much to work on, that's all. We put the newspaper ads in and let it go.

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(Tr. p. 2926)

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Q. And what are the factors, sir, which determine whether or not your liquid bleach sells; what competitive factor determines?

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A. Consumer acceptance.

Q. Who are your competitors in this sales area, sir, in the liquid bleach field? A. Clorox and 101. In the eastern area, why, it is Clorox.

Q. Are you familiar with the dry or powdered bleaches? A. Yes.

Q. Do you consider them competitive with your liquid bleach?

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A. Yes, they are competitive but statistics will show that only 5% of the people are using powdered bleach now.

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(Tr. p. 2927)

Q. How do they compare functionally, sir, in use in washing; the dry and the liquid?

* * * * *

A. The liquid bleach is quicker; more thorough.

Q. Is there quantity comparison in the usage of bleach in laundering between the two?

* * * * *

A. The powdered bleach is generally considered to be about 1/7 as efficient; takes about seven washings to equal

what a liquid bleach would do; in the home. I am speaking about home laundry.

* * * * *

Q. Is the freight cost and the shipping of liquid bleach, household liquid bleach, is that a significant factor in the price of the bleach? A. Yes, it is.

Q. And how significant is that factor, sir? A. On the fringe the territory, the outer edges, it might amount to as high as 30% of the cost that you get from your

(Tr. p. 2928)

wholesaler.

Q. Now, you say the fringe of the areas. What is the limitation placed by freight upon your sales area? A. About 300 miles.

Q. In setting your liquid bleach price, sir, what do you consider in arriving at the prices which are on Exhibit 515? A. You consider your competition.

Q. In making that consideration of the competition how do you price your product? A. Well, we price our product slightly under competition to offset the heavy advertising we are up against.

Q. Is Sunny Sol your only brand name for your liquid bleach that you sell? A. At present, yes.

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(Tr. p. 2929)

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Q. All right sir, in that conjunction, would you explain what competition meant—what you mean by competition when you were talking about pricing your product? A. Well, if I am in Utica I would mean Clorox and therefore I would be very definitely—naturally, we are in business to make money and we try to put our price up to as high

a point above the cost of glass, labor and transportation as we can, and still get a movement off the shelves, without pricing ourselves out.

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(Tr. p. 2932)

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Q. Is your bleach a sodium hypochloride solution? A. Yes.

Q. What percentage is your household? A. Five and a quarter.

Q. Are you familiar with the percentage of makeup of your competitors' bleaches? A. Yes.

Q. On what basis are you familiar with them? A. By actual chemical tests.

Q. Are those bleaches similar to yours in sodium hypochloride content? A. Yes.

Q. Is there any difference between those bleaches and your bleach? A. Generally, no.

Q. Can you tell us, sir, the number of bleach producers in your sales territory?

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(Tr. p. 2933)

A. There is only one other manufacturer in that area. We don't manufacture in that area. Therefore, I have one manufacturing competitor near Albany.

Q. Who is that? A. Well, that is the—I really don't know the name. It is a small company down there, largely making private brands, down near Albany.

Q. Now, can you tell us, sir, what percentage of your household liquid bleach is sold through grocery stores to the ultimate consumer, if you know? A. I don't know.

It seems to me that all household bleach is sold through grocery stores.

* * * * *

Q. Do you know what percentage of your sales would be going through chains as opposed to independent grocers?

(Tr. p. 2934)

A. I would say 80 percent.

* * * * *

Q. How do you distribute your household liquid bleach? A. We send it to a chain store warehouse, or to a wholesale grocer.

* * * * *

Q. Is that by direct sales contact or broker? A. Direct.

Q. Is your price for your bleach—is that a delivered price? A. Delivered.

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(Tr. p. 2937)

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Q. Now, in selling your household liquid bleach, sir, is shelf space in the grocery stores a problem?

(Tr. p. 2938)

A. Yes.

Q. How do you attempt to get shelf space for your bleach? A. By getting enough of it in the back room so that they want to get it out of the back room, and then onto the shelf. (Laughter). When he gets crowded in the back room, he will put it on the shelf.

Q. What do you use to encourage the people to buy it from the back room?

* * * * *

The Witness: By that newspaper advertising. Frequently, we have a man go around and he will—the storekeeper will say—the supermarket manager will say, "We just haven't got the help to get them out. We know that shelf is there, and we have a load in the back of the store." So, our man will get a truck from them and haul up 25 cases or ten cases and get it on the shelf, and then maybe the next week, you will come around and do the same thing, but we find that is pretty hard for the small volume we have in this existing situation that we are going through right now—sort of pre-franchise period—of being able to get into all these stores and do all this work that we would like to do,

(Tr. p. 2939)

because we don't have a big enough volume.

* * * * *

Q. Is your advertising extensive enough to allow you to receive any discount rates? A. No.

Q. What rate do you pay for your newspaper advertising? A. We pay the national rate. As I say, they generally make us take these combination deals.

Mr. Royall: What is that?

The Witness: They force the combination deals—take the morning because we want to use the evening. They make us take the morning.

By Mr. Deveny:

Q. Is there a local rate available on newspapers? A. But not to us. They claim we are national. I don't know why, but they claim we are. I guess if you are national on anything, you are national on everything.

Q. Do you have any TV or radio programs? A. Not at present. A long while ago, I spent a lot of money on radio, but I don't have it now.

Q. When you used radio, was that programming, or spot type,

(Tr. p. 2940)

or something else? A. Both. We purchased 104 programs at a time from an outfit like, in Chicago, McGregor and Solle Company, say a skit called Eb and Zeb. We run that on radio maybe once a week for two years, but we would have to purchase 104 transcriptions, and it would run approximately twelve minutes and give us three minutes of commercial continuity, but now we don't do that, but we just use this newspaper. We have franchised out this other setup.

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(Tr. p. 2941)

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Q. In what section of the grocery store will you find household liquid bleach generally in your sales area?

(Tr. p. 2942)

A. In the soap and cleanser department.

* * * * *

Q. Are you producing at full capacity on your household

(Tr. p. 2943)

liquid bleach at Caledonia? A. No.

Q. What is your production period, sir? A. We run about one day every two weeks, something like that.

Q. And what is the basis of running for that period, sir? A. What was that?

Q. Why do you run on that schedule? A. Well, we just pull men out of the other departments and bring them in and put them on the bottling line and turn that out, to take care—take care of this territory, that's all, and we know we have—we keep up stock and when the stock gets

low we just call some—take them off some other department and put them in there and run the line. As I say, every—sometimes it might run two days in a week and then again we might not; just when our stock gets low.

Q. Is the process of household liquid bleach a technical process? A. Yes.

Q. Is machinery required to produce this an expensive item? A. Yes.

Q. Approximately how much would a setup for a household bleach plant such as yours represent in capital, if you know, sir?

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(Tr. p. 2944)

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A. Well, I assume that you mean what does the bottle line cost?

Q. Yes, sir, if that is—— A. ——and also the bleach vats and——

Q. If that comprises—— A. ——but you don't mean the trucks that carry it away or anything like that?

Q. I was mainly interested in machinery, sir, yes. A. The machinery would cost around—the minimum would be about $50,000.

Q. Is this machinery that is sold on the open market or is there some custom specifications involved in it? A. It is sold on the open market with the exception of the filler and the fillers are specially constructed to take care of a corrosive material such as bleach.

Q. Do you use a—or can you use that machinery for producing anything else? A. By changing certain parts on the filling machinery you possibly could bottle starch and amonia but it isn't advisable due to the nature of the products.

Q. Have you considered expanding the sales territory that you have remaining in the sales of household liquid bleach? A. We plan to tie that in with another franchised area and

(Tr. p. 2945)

if you mean that as expansion, why yes.

* * * * *

Q. Well, can you tell us, sir, what areas your franchises are located in? A. Well, it is just the areas that we established and started, which is Buffalo and Rochester and Syracuse and Elmira.

Hearing Examiner Haycraft: All in the State of New York?

The Witness: Well, they dip into Pennsylvania; Erie.

Hearing Examiner Haycraft: Pennsylvania, some of it?

(Tr. p. 2946)

The Witness: Yes, and we just franchised that out and we are out of business as far as that is concerned as we either had to build a new plant and get into that form of merchandising, which is a little different from our general run of business, you see.

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Q. Are you familiar with the shelf price in the store of your bleach, sir; at what price it is offered?

* * * * *

A. Well generally, I check those prices whenever I am in these different areas and I find that the customers are getting about the same price for ours as they do for Clorox. In fact, generally—however, I do find once in a while they have the price down about a cent a gallon off, or a cent on a half a gallon, or something like that.

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J. W. Jones—Direct

(Tr. p. 2947)

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Q. When did the company commence producing a household liquid bleach; what year? A. Our company?
Q. Yes. A. 1931.

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(Tr. p. 2950)

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Q. All right, Mr. Jones, why do you have to consider the price of Clorox and your other competitors in setting your price?

* * * * *

A. It is just an economic situation, that if Clorox is out-advertising me in the market and their price is $2.01 and they are out-selling me two to one as it is, I probably will go very carefully in jumping my price in that market. If on

(Tr. p. 2951)

the other hand I am selling equal to Clorox and enjoying a good volume I am spending an equal amount of money in newspapers as they are, I think I would be willing to take chance at selling it at an even price. So there you are; it is just a competitive situation based on judgment and analysis of a local situation.

A. Are you familiar with the promotional text used by the soap companies in promoting their products? A. Yes.

In the early days of this business I called on thousands of grocery stores and I have kept in touch with them right along since, and I am pretty well familiar with all the big soap companies methods and it has been interesting to see how they operate in the different markets and the results that they have obtained by these different methods.

J. W. Jones—Direct

Q. Well now, is liquid bleach, in your opinion, adaptable to these types of promotion? A. Very definitely liquid bleach is.

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The Witness: ——liquid bleach is used by 95.5% of the housewives in this country and when you get anything so universally used it is very adaptable to merchandising techniques because you have very few misses; everybody is going to be interested up to the extent of 95.%. If you got

(Tr. p. 2952)

a special offer 95.5% of the people are going to be interested in the special offer. If it is powerful enough they are going to be interested immediately, not even to wait until the end of the week.

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(Tr. p. 2955)

Q. I asked you, subsequent to reading it in the Wall Street Journal, had you become aware through the dealing in the trade that Procter & Gamble had acquired Clorox?
A. Oh yes. That was——
Q. Well now—— A. ——that was a very important subject in the trade.

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Q. Now, let me ask you, sir, would that acquisition have any effect on your business?

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A. Based on my business judgment——

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(Tr. p. 2956)

A. ——if Clorox——

* * * * *

A. ——runs along the way they have been running, in the experience that I have had with them for 27 years, then I feel that my company or any of our associates could meet them in the market place and operate satisfactory as we have in the past. If they become a more aggressive merchandiser, getting away from the newspaper technique of influencing sales through newspaper advertising and go to the more, you might say, dynamic form of merchandising such as only soap people know how to employ, then people like myself would be in trouble.

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(Tr. p. 2962)

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Mr. Larsen: Mr. Tincher agrees. On the possible recall of Mr. Gardiner, on the basis of the conference we had, we have decided there is no reason for the recall of Mr. Gardiner at this time. One of the factors which we were checking was the sales promotion expense item, which was included on Exhibit 512. We learned from Mr. Gardiner that this expense item concerned (1) occasioned promotions. He described them as specialized instances and usually nonrecurring, except probably annually. Included among such promotions were such things as samples for the salesmen, the maintenance of a booth at the county fair, the

(Tr. p. 2963)

employment of demonstrators, purchase of space at home shows, and local special events. Is that substantially correct, Mr. Tincher?

Mr. Tincher: Yes, with the one exception, that the booth and demonstrators were not his, but merely his share as contributed to the booth and demonstrator of his broker.

Mr. Larsen: That is correct.

Now, as to the other item that Mr. Gardiner investigated. It included sponsorship of a five minute newscast. Mr. Gardiner or his office called his advertising agency—I am not certain which—and they advised him that 101 has not sponsored a newscast, but that probably it had employed spot announcements, which were contiguous to the newscast, and on the basis of that information, we accept that as the situation. Is that correct?

Mr. Tincher: That is correct.

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(Tr. p. 2967)

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CROSS EXAMINATION

By Mr. Royall:

Q. Mr. Jones, I want to ask you just a few questions and there will not be many of them.

Now, your principal business is the manufacturing of Chlorine and other chemicals and the distribution of it, isn't it? A. I don't manufacture Chlorine itself. I manufacture—I buy Chlorine in tank cars.

Q. Tank cars? A. And put it in the smaller vessels.

Q. I see. A. Which I deliver to municipalities and sewage plants.

Q. And on your other chemicals—you have some other chemicals too?

(Tr. p. 2968)

A. We also take amonia in tank cars and we do the same thing; put them in smaller vessels. And in order to put them in smaller vessels we have to relieve the pressure in which we fill this vessel and instead of blowing these noxious and poisonous gases out into the air we put it into a chemical which has an affinity for the said gases,

making a product which we don't run in a creek, we put into bottles and sell it to grocers; we put it into carboys and sell it to the laundries; or we put it into a bulk tank and sell it to Spring Mills.

(Tr. p. 2969)

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Q. You operate that business through one or two companies or several companies, and you have several plants, do you not? A. Yes, we have several plants.

Q. Is the J. W. Jones Company Incorporated of Beach Grove, Indiana, in that operation? A. Yes.

Q. Is that your company? A. Yes.

Q. Is the John Wiley Jones Company of Torrence, California, in that business? A. That is perfect except for the parenthesis, Western Division.

Q. Western Division. Is that the same corporation as here? A. No. That is owned by me, but it is a different corporation.

(Tr. p. 2970)

Q. And that is in the same type of business you have described? A. That is right.

Q. You have plants at Jacksonville, Florida; Charlotte, North Carolina; Beach Grove, Indiana; North Miami, Florida; Torrence, California; and Wyandotte, Michigan in that business, do you not? A. Yes, and St. Petersburg and Caledonia, New York.

Q. Yes. And any others that you can think of? A. We have another company in Utica, New York, Monarch Laboratories and Jones Chemicals at Erie, Pennsylvania.

Q. Yes. They are all engaged in the type of operation you have described on this cross examination? A. Yes.

Q. Let me see. What company was it that you incorporated in Florida in January of '57? A. That was the

Jones Chemicals Incorporated, Southeastern Division. That covered Georgia, Florida, and certain portions of South Carolina.

Q. I see. A. The one at Charlotte is Piedmont Division.

Q. Yes. Now, you said you franchised your liquid bleach business, or a considerable portion of it, to others. Is that right? A. That is purely the household.

(Tr. p. 2971)

Q. I mean the household liquid bleach. A. Yes. We keep control of the liquid bleach business as liquid bleach, no matter where we are. We supply all kinds of people with that. We supply a great many people like our franchise operators, which are more or less just customers that buy liquid bleach from us.

Q. But you sell others liquid bleach, do you not? A. Oh, yes.

Q. And they convert it into household bleach? A. That is what they are called, converters.

Q. Now, the principal territory which you franchised was franchised to the Kleen-Brite Chemical Company? A. Yes.

* * * * *

Hearing Examiner Haycraft: Where are they located?

(Tr. p. 2972)

The Witness: Rochester.

By Mr. Royall:

Q. That was franchised in January of 1957, wasn't it? A. Just about. I think it was March, '57.

Q. March of '57. And that embraced the Sunny Sol name and household bleach? A. Yes.

Q. Did it also cover private labels, such as Bright Sail sold by the A & P stores and Speed Up sold by the American Stores?

* * * * *

A. We never sold White Sail. We never packed White Sail.

Q. You did sell American Stores? A. Yes. Speed Up —we sold that.

Q. Did you have a Pleezing, P-L-E-E-Z-I-N-G? A. No. That isn't owned by us. I don't know as we packed any of that in recent years. That is owned by Pleezing Corporation of Evanston, Illinois.

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(Tr. p. 2974)

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Q. Do you know whether the Kleen-Brite supplies A & P, Loblaw, and Grand Union Stores?

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The Witness: The last I knew, they were supplying them.

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Q. Now, you testified that you, in your present part of the territory that is not franchised to others—you used practically newspaper advertising, nothing else? A. That is right.

Q. Now, when you have the entire territory before franchise,

(Tr. p. 2975)

you used other types, did you not, sir? A. That is right.

Q. You used coupons for one free quart tied in with a radio show, "Musical Clock," on WBEN in Buffalo, did you not? A. I don't ever recall being on the "Musical Clock." Who was the personality on the "Musical Clock"?

Q. I am sorry, sir. A. I wouldn't know.

Q. But you did use it? A. We were on dozens of radios, and I would have to identify—was it Arthur Godfrey, so and so, on WBEN, because the "Musical Clock" as such means nothing to me.

(Tr. p. 2976)

Q. Well, unfortunately I can't give you that answer. We haven't had time—— A. I never remember——

Q. I don't want to mislead you, I am just asking you these questions so—— A. I never remember using a coupon in connection with any radio advertising in Buffalo. I could be mistaken but I would have to be refreshed on it. It would be before '52 if it was before that anyway.

Q. You would know that, sir? A. Yes.

Q. Did you use in connection with your coupons, a coupon mailing organization called "Brands You Know"? A. No, I don't recall using that.

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(Tr. p. 2977)

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Q. Do you recall using a coupon mailing organization, whatever its name is, that included not only your product but other leading products?

Mr. Deveny: I object, Your Honor. He testified he didn't recall using any.

Hearing Examiner Haycraft: Over-ruled.

Q. Do you recall that? A. What is the question?

Q. Do you recall using a coupon mailing organization to mail out your coupons and at the same time coupons for Boscul Coffee? A. Yes, I believe we did. That was prior to my franchising this out.

Q. Wasn't this after 1952? A. Yes, I believe you are right.

Q. Yes, sir. A. But that was——

Q. And I am asking—— A. I think that was done in the Rochester area only.

Q. And it also coupled your coupons with coupons of other leading brands did it not? A. I think it was Boscul and Coca-Cola.

(Tr. p. 2978)

Q. Coca-Cola? A. Yes.

Q. Did you—— A. The reason for that is the cheap postal rate that we couldn't get on our own.

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Q. Yes. And do you recall in '56 that in the Loblaw stores customers were given 5¢ coupons on quarts, 10¢ coupons on half-gallons and 15¢ coupons on gallons? A. I don't remember anything except they were given a 10¢ coupon on a half a gallon.

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Q. Now, do you recall in 1954—'55, that you gave coupons

(Tr. p. 2979)

on household bleach redeemable for nylon hose?

* * * * *

A. No, I don't remember doing that.

Q. You don't remember that.

You remember making an offer in connection with nylon stockings? A. We have had that, and bath towels, in the past. Probably 25 years time; Cannon towels, Cannon —three, what do you call "buy a pair and spare"; something like that. I believe that was even before '52.

Q. Do you recall whether or not you did it on nylon stockings? A. Oh, yes, we did it with hose as well as that.

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Q. You gave free goods too, did you not?

(Tr. p. 2980)

A. In connection with what, the consumer?

Q. In connection with the trade, didn't you give one case of bleach free for ten, on several occasions? A. To my knowledge we may have, yes, but I don't know as it was the general practice, except to meet competition or perhaps Clorox was giving a special advertising allowance and where we had to we had to meet it.

Q. Can you give me a single instance in which you used it to meet Clorox? A single date or time when you used it to meet Clorox? A. Well, we—yes. It is usually in——

Q. I don't mean usually, a specific time. A. —— April and May of each year.

Q. What year? A. Well, each year when we had a spring cleaning drive.

Q. And you gave in each year you had a spring cleaning—— A. Not necessarily. If they came out with a special, or a competitor came out with a cut price—101 had a coupon worth, I believe it was 8¢.

Q. Well, don't you know you did it before Clorox in a number of cases; before they did? A. Clorox has always given a spring deal special.

Q. Yes, but didn't you beat them to it in a number of instances? A. Never.

(Tr. p. 2981)

Q. Are you sure about that? A. Oh, positive. Believe me, I am a little guy and I can't afford to give money away unless I have to.

Q. Now, did you give on other instances one case with five and one case with one? A. I imagine that I have probably given them even better than that if I had to.

Q. Well now, didn't you do it—let me ask you this—— A. And I would do it again if I had to.

Q. On store openings didn't you do it? A. Do what?

Q. Give free goods. A. Sure.

Q. Yes, sir. And did you say this morning, whether or not—— A. Our competitors have given as high as five cases per store to get in.

Q. Who? A. Some of our competitors.

Q. Some of your competitors. Did you use—— A. Just to get in each store. If a chain store had a 100 stores they would give them 500 cases.

Q. Do you remember some of the chains that did that? A. Well——

Q. Some of the bleach—— A. There isn't any chain in America that hasn't accepted it.

(Tr. p. 2982)

Q. But can you name specific bleaches who gave that deal that you just stated? Can you name one of them? I mean just one or two of them? A. That was the general practice upon opening, when they are trying to get in.

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(Tr. p. 2983)

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Q. . . . Did you use placards in the windows? A. I have used placards in windows, yes.

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(Tr. p. 2984)

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Q. Now, did you ever use, when you were conducting your business, before the franchises, did you use billboards? A. No.

Q. Road signs? A. Yes.

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(Tr. p. 2988)

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By Mr. Royall:

Q. I hand you Respondent's exhibit for identification only, No. 30, and ask you if you can identify that as a coupon issued by your company in the year 1955?

I don't want to mislead you. There is a date on it, sir, and I thought you might look at it and——

(Tr. p. 2989)

A. I couldn't swear that it was put out in 1955 because the redemption date says October 1, 1955, but we might have given a year's time and we might have put that out in '54.

Q. Well, '54 or '55? A. Yes.

Q. You identify it as one given in either '54 or '55? A. Yes.

Q. All right, sir. That is all I wanted. A. This features a half a gallon with a handle. They don't have them on quarts.

(Tr. p. 2990)

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REDIRECT EXAMINATION

By Mr. Deveny:

Q. Mr. Jones, under couponing your combination with Boscul and Coca Cola, did you have any control over the other products, issuance of coupons? A. None whatever.

Q. Over the selection of the other products? A. No.

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(Tr. p. 2991)

The Witness: The advertising distributing company of Rochester came to us and said, "Your postage for so many thousands, if you do it alone, would be so much under your postal permit. If you will join with us, with Boscul and Coca Cola, you will get it for approximately a third." So, naturally, they are non-competing items. A lady gets in the mail three coupons instead of one. One is on a washing solution, or a bleach. The other is a free coupon for some coffee, and another is for a bottle of coca cola. Each costs us a third. We get the benefit of the promotion, and it is a good deal, where, alone, we couldn't afford to do it. You see, that is the idea. As a small operator, we have to do the things we wouldn't have the money to do otherwise.

By Mr. Deveny:

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Q. In a proposition such as that, have you had an opportunity

(Tr. p. 2992)

to coupon along with a soap or cleanser manufacturer? A. No. We never did do that.

Q. I think you have told Mr. Royall about some couponing that occurred in the past prior to your franchising this Sunny Sol. Why did you coupon? A. Why did we coupon?

Q. Yes. A. The reason for couponing was really to gain distribution in the stores, which ordinarily would demand so much free goods. . . . We weren't. We had to get the women to go in and say, "We want Sunny Sol." So, I had to either go to the churches and get the women's

clubs in the churches, or I had to go to schools and get the kids to save bottle caps, or I had to give a coupon to the woman that would go into a store and say, "Listen, do you want my trade? If you do, I want this bottle of Sunny Sol that this coupon is good for."

That way, I broke into any spot I wanted to get into without having to give such high allowances to some buyer at some chain store organization, because the housewife is the queen, even to the hardboiled chain store operators. If she wants Sunny Sol brand, she will get it.

Mr. Royall: We move to strike out this statement

(Tr. p. 2993)

that the big chains or big outfits can buy their way in. I move that be stricken.

Hearing Examiner Haycraft: That may go out.

By Mr. Deveny:

Q. Why did you use the towel and nylon premium, sir? A. After you once get a person using your product, the next thing to do is to keep them coming. You may lack money with which to keep reminding them in expensive media. Therefore, the next best thing to do is to offer them an inducement whereby, by label or bottle caps, if they keep buying your brand after that first inducement, maybe after a couple or three years of getting enough of these labels and enough of these caps, they become a victim of habit, and they will stick with you as long as the old man dies—or lives before he dies.

That is why we used the nylons and the Cannon towels. It kept them coming at a low rate per case.

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(Tr. p. 2995)

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Court Room No. 711,
United States Post Office and
Court House,
230 West Fort Street,
Detroit, Michigan,

June 24, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2997)

PROCEEDINGS

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(Tr. p. 3001)

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John Riccardi

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Tincher:

Q. Will you state your full name and address, please? A. John Riccardi?

* * * * *

Q. Mr. Riccardi, would you tell us, please, what company you are affiliated with? A. Roman Cleanser Company.

Q. Where is that company located? A. 2700 McNichols.

Q. Here in Detroit?

(Tr. p. 3002)

A. Yes, sir.

Q. What is your position with that company? A. President.

Q. Is that company a corporation? A. It is a corporation; incorporated in 1930.

Q. Is it a public corporation or is it a family corporation? A. Principally family.

Q. Have you ever published, or issued to the public your financial statements, or your sales statements or anything of that nature? A. No, sir, only Dun's; but no one else.

Q. Is that Dun's of Dun & Bradstreet? A. Yes, sir.

Q. How long has your company been in existence, sir? A. 1919.

Q. Were you with it at that time? A. Was I what?

Q. Were you with your company at that time? A. I founded it. I am the founder of it.

Q. You have been with it ever since 1919? A. Ever since.

Q. All right, sir. Now, what products does your company produce and sell? A. Roman Cleanser bleach.

(Tr. p. 3003)

Q. Is that a liquid bleach? A. Yes, sir.

Q. What other products does your company make? A. Well, Romay and Romite. Romay is to wash walls and Romite is to wash windows.

Q. Can you tell us approximately, sir, what percentage of your company's business is liquid bleach? A. About 98 per cent, approximately.

Q. Is your liquid bleach a household or industrial type of bleach? A. It is household.

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(Tr. p. 3004)

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Q. Mr. Riccardi, I will hand you now what has been marked Exhibit 519 for identification——? A. Yes, sir.

Q. (Continuing) ——and I ask you to tell us what it is,

(Tr. p. 3005)

and who prepared it? A. My bookkeeper prepared this, and this is the gross amount of cases at my plant.

Hearing Examiner Haycraft: Is it gross sales?

The Witness: It is gross sales, that is right—1952, 1953, 1954, 1955, 1956 and 1957.

By Mr. Tincher:

Q. Let me ask you, sir, if these figures we are talking about, represent the sales by your company of liquid bleach for the years indicated?

* * * * *

A. Liquid bleach; that is correct.

Q. I would like to call your attention to one thing, sir, and this is just because I am curious: You have just said this concerns your gross sales, but the document is entitled "net sales." I would like to have you look at it and say whatever you wish to say about it. A. My secretary didn't ask what title to give it, and they put that title on themselves, you know. That is gross sales. It represents gross sales in dollars, and not cases.

Q. All right, sir. That being the case, I wonder if you will take a pen and strike out the word "net" and write

the word "gross" above it. It is there in the first line. A. That is right. (Marking on paper.)

(Tr. p. 3006)

Q. Will you put your initials by it, sir? A. That is right. (Writing on paper.)

Q. All right. Thank you, sir.

Mr. Tincher: Mr. Examiner, I offer Commission's Exhibit 519-A for identification in evidence, with the request that it be placed in camera.

(The paper referred to, heretofore marked for identification Commission's Exhibit 519-A, was received in evidence, and placed *in camera*.)

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(Tr. p. 3007)

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Hearing Examiner Haycraft: What is your understanding of the difference between "gross" and "net"?

The Witness: Well, if it is my gross, it is all of the income, the money I receive, and the net is everything, less two per cent discount and so on.

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(Tr. p. 3008)

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By Mr. Tincher:

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(Tr. p. 3009)

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Q. Will you tell us, sir, what the name "Noboil" means; what it is? A. It is a bleach. It is the same way; the same bleach; the same as Roman Cleanser, but a different name. It means do not boil the cloth when you use that.

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(Tr. p. 3011)

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Q. Mr. Riccardi, I hand you Commission's Exhibit 522 for identification and ask you to tell us what that is, and who prepared it?

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The Witness: This is the expenditures that the Roman Cleanser Company spent for advertising.

By Mr. Tincher:

Q. All right, sir. Does it include expenditures for promotions? A. Promotions are included.

Q. Who prepared this document, sir? A. My secretary and my bookkeeper, and some other employees there.

(Tr. p. 3012)

Q. Did you request that they prepare the document? A. Yes, I did.

Mr. Tincher: I offer Commission's Exhibit 522 for identification in evidence, and this document should be in camera also. It is a very complete breakdown.

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(Tr. p. 3013)

(The paper referred to, heretofore marked for identification Commission's Exhibit 522, was received in evidence.)

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(Tr. p. 3020)

Q. Now, Mr. Riccardi, would you tell us where your company produces liquid bleaches; where your production plants are? A. Yes, sir. The main plant is in Detroit, Michigan, located at 2700 West McNichols Road; another one at Griffin, Georgia, and another one at Tampa, Florida, and the recent one at Miami, Florida.

Q. Now, why do you have several plants rather than just using one? A. Because we save freight on delivery. It is a convenience.

Q. How does that enter into it? A. Our product is too bulky to carry it over a certain distance. In order to save on freight, we must have a plant, you know, in certain territory, and some others in other territories.

Q. Generally speaking, what is that certain distance you refer to that you can't ship beyond? A. Well, the distance, to make it profitable, you know, there should be one shop about three hundred miles to another, so you will have about 150 miles "radium" to have money in deliveries.

Q. All right, sir. Now, where does your liquid bleach sell, or what are the sales areas for your liquid bleach? A. Well, it is Michigan, Ohio, part of Pennsylvania,

(Tr. p. 3021)

part of Indiana, Georgia, part of—let me see, Florida, and some other state. I don't recall now. Let me see.

Q. Do you sell in either of the Virginias, sir? A. We sell very little in Virginia. We have got a little in West Virginia.

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Q. Do you go as far west as Illinois, sir? A. Illinois?

Q. Yes. A. We go—we have been a few miles from Chicago.

Hearing Examiner Haycraft: Do you cover the whole state of Florida?

The Witness: Not exactly. A part, we can't cover it, because it is too far from the shop. We cover what is convenient.

By Mr. Tincher:

Q. All right, sir. Now, will you tell us how your company advertises its liquid bleaches; what methods do you

use? A. Through advertising agencies, through cooperative advertising, through buses and through billboards.

Hearing Examiner Haycraft: That is, newspapers?

The Witness: Newspapers and agencies. That is

(Tr. p. 3022)

newspapers and radio; a little television.

Hearing Examiner Haycraft: Radio spots or programs?

The Witness: Radio spots and television, some times, spots, and newspapers.

By Mr. Tincher:

Q. Do you use any magazines in your advertising, sir? A. No magazines.

Q. Now, is the advertising that you do in radio enough advertising to enable you to get the maximum discounts that is offered by the radio station? A. No, I couldn't do that. I don't advertise enough to get my full discount.

Q. All right, sir. Now, will you tell us what method your company is using, and has used since 1952, to promote its liquid bleach? A. We used allow ten cents a case to our customer to advertise. We call it cooperative advertising, and besides there is the agency. Our agency advertises according to what I tell it to do. It will be a certain amount per case, more or less. I do not know exactly the amount.

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The Witness: May I complete my answer?

(Tr. p. 3023)

Hearing Examiner Haycraft: Yes.

The Witness: That was several years ago? The last two or three years, we have given six cents cooperative advertising to our customers.

By Mr. Tincher:

Q. And, why did you change from ten cents to six cents? A. We followed the others.

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Q. Let me show you Commission's Exhibit 522, and I will ask you to look at this horizontal column entitled "Sales Promotional Accounts." A. Yes, sir.

Q. And, will you refer first to the coupons and redeemed coupons, and tell us what that is? A. That represents a small part of the amount.

Q. Were those coupons to the housewife? A. Yes. The coupons was very little; not very much. It was 1951, I think. We gave so many thousands and that is all. We found it very complicated to follow through so we quit.

Q. Going on to the next category, "Free Merchandise," what was that? A. Let me see that. Free merchandise. We sold to dealers,

(Tr. p. 3024)

free merchandise. That will be when we offer a new deal as an introduction. We used that as an introduction.

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Q. Let me ask you this, sir: Was this free merchandise, free bleach, and, if so, how much merchandise was bought; or was this radio or television? A. No, when we open a deal, we give them one case free to each store, and then we sell it to the wholesaler and the wholesaler sets the amount free to deliver.

Hearing Examiner Haycraft: The wholesaler?

The Witness: Yes. It is a certain amount a case, one case free for each store, and then they start to advertise as an introductory.

By Mr. Tincher:

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Q. And, what does the ten cent floor stock represent?

(Tr. p. 3025)

A. Some time, a year ago, we had a ten cent deal; the price on a case, and at a certain time, maybe, for four weeks we will sell for ten cents less a case, but we had to cover the floor stock of our client, and they would send us, you know, for the floor stock; they would pay ten cents a case.

Q. All right, sir.

Hearing Examiner Haycraft: I don't understand that.

The Witness: We delivered it, either our salesman or our supervisor, to the people, and they send the amount, you know, because, as you know, on that kind of deal, they take it by machine; what do you call it, the MIB?

By Mr. Tincher:

Q. The IBM? A. Yes.

Q. What does a customer have to do to get that? A. Just count the amount. When a deal begins, he counts the amount of stock he has on hand.

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(Tr. p. 3026)

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Hearing Examiner Haycraft: How could a customer determine how many cases he could get ten cents on?

The Witness: We trust them. What they have on hand, we know. We examine how much he bought, and from that it would give me an idea, more or less, what he has. They are honest; a lot of people. You know, my—what do you call it—my salesmen and supervisors report, you know.

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By Mr. Tincher:

Q. Do they have to display your merchandise to get the ten cents a case? Is that what they get it for? A. No. We make the sale, you know, ten cents off, for one month, you know.

Q. For one month? A. For one month.

Q. Yes.

(Tr. p. 3027)

A. And, in order not to lose on the stock they have, we pay them ten cents for the floor stock what they had. When the deal starts, you see.

Q. That is, for the cases they had on hand? A. That is right.

Q. When you started the deal? A. That is right.

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Q. All right, sir. Now, let me refer you to the column

(Tr. p. 3028)

marked "$1.00 Deal." What is that? A. This one dollar deal; some times we introduce something for a dollar; just for the first starter.

Q. Is that a dollar a case? A. A dollar a case, yes, sir.

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Hearing Examiner Haycraft: How long does that last?

The Witness: We pay a certain amount for thirty days, four weeks. You know, our month is four weeks, thirteen months to a year. Usually we do that for four weeks; then they pay the regular price.

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(Tr. p. 3029)

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By Mr. Tincher:

Q. I had asked you just before we recessed what this "temporary offer" column represents. Did you find out anything on that? A. Yes, sir. It is for all the places. It is a resume for all the places; some ten cents, some fifteen cents, according to the deal. It is complete, but they have to prove the money was spent.

Q. When you say ten and fifteen cents, you mean so much a case? A. Yes, some ten cents; some for two or three months, and some fifteen cents.

Q. What is this ten and fifteen cents? A. Maybe it is off the price list; ten cents a case off, you see.

Q. All right, sir. Now, in selling your liquid bleaches, has your company given free samples of the bleaches to the housewife? A. Yes, sir, for years, yes, sir. In every deal, we give

(Tr. p. 3030)

it. We used to give three free samples.

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Q. Has your company used price reducing labels in selling its bleach, and by that I mean the label that says so many cents off, and the housewife can buy your bleach at so many cents off the regular price? A. We started a deal about two years ago, I think two years ago; two years, in 1956 and 1957; I think so.

Q. In what areas did you use that particular promotion for? A. For all our territory, simultaneously.

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(Tr. p. 3031)

Q. In selling your bleach, sir, has your company given any novelties or anything like that to the housewife?

A. No, sir, except I remember a pot holder once in a while.

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Q. What did the housewife have to do to get the pot holder, sir? A. Nothing. We just gave it as a supplemental, you know; our salesmen distributed them or handed it out to them.

Q. Was the pot holder fastened to a bottle of bleach? A. No. No. In some cases, probably, but very little. Maybe some times our salesmen put it in with a gallon in a few stores, but not every one. Usually the pot holders is handed out to the lady.

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Q. And, have you ever had your liquid bleach tied in

(Tr. p. 3032)

with the sale of any other product where, if a person would buy your liquid bleach, she would get another product free or at a reduced price, or if she would buy another product, she would get your liquid bleach free, or at a reduced price? A. To the store or to the housewife?

Q. Either, sir. A. We had a deal of two little bottles of Romite in every gallon as an introductory for this product; so one case of Romite cleanser would contain two bottles with a special case of my design for one month.

Q. The Romite is the window cleanser? A. Two bottles between six bottles of every gallon. That was free.

Q. And Romite is the window cleanser; is that right? A. That is right.

Q. Now, will you tell us why you advertise your liquid bleach, sir? A. Like anything else, you must advertise. It is to let the people know about your product.

Q. And, I will ask you the same question as to why you used these various types of promotion that we have been talking about? A. It is for the people to buy more cleanser.

Q. How does having these promotions help people to buy

(Tr. p. 3033)

your cleanser, sir? That is what I am trying to find out. In other words, when you have this special label price or any other promotion, how does that help people to buy your bleach? A. They buy it because they can get it cheaper. They can buy at a certain determined time cheaper, and they will learn about Roman cleanser. They will learn about the product.

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(Tr. p. 3035)

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Mr. Tincher: I think that is what is causing the trouble, if you will look at it. Mr. Reporter, would you please mark as Commission's Exhibit 527 for identification, a label of Clorox, five cents off the regular price of this bottle. Contents one gallon.

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(Tr. p. 3036)

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Q. I will hand you now Commission's Exhibit 527 for identification, and point out to you that it refers to the gallon size. A. Yes, sir.

Q. Whereas the previous size was a half gallon? A. That is right.

Q. Which one did you have reference to, the gallon or the half gallon size when you were talking about one of

your salesmen? A. I think it was five cents off a gallon.

Q. It was five cents off a gallon? A. Yes, sir.

Mr. Royall: We will admit that it is being used by Clorox in this territory.

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(Tr. p. 3037)

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By Mr. Tincher:

Q. Mr. Riccardi, is your liquid bleach in the Detroit area being offered at a price off the label at the present time? A. Right now?

Q. Yes, sir. A. Yes, sir.

Q. Sir? A. Yes, sir, it is.

Q. And, how much off the label? A. Seven cents off a gallon.

Q. And, how about quarts and half gallons, sir? A. Nothing.

Q. And, how about the three-quarter gallon size? A. Five cents off the three-quarter gallon size; that is right.

Q. And I think I understand your testimony correctly: Is

(Tr. p. 3038)

this the third straight year that you have had such price off the label situation; this year being 1958? A. If I am correct, it is the third year.

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(Tr. p. 3040)

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Q. All right. Now, referring to those two names you used, sir, the Roman and the Noboil, what determines which name you will use? A. What place?

Q. In any place. A. Detroit has no Noboil. We bought that in Atlanta. We bought a factory and with that name, and we continued with that.

Q. That was the name of the company that was producing the Noboil? A. This town has nothing but the Roman cleanser, but we intend to put the other things in here pretty soon, yes, sir.

Q. All right. To find out, was there a company there selling and producing that product Noboil? A. Yes, sir.

Q. And you bought out that company? A. Yes, sir.

Q. When was that? A. 1950; that is right.

Q. Where was it located? A. Atlanta; Atlanta, Georgia.

Q. Now, has your company ever sold liquid bleach in

(Tr. p. 3041)

pints? A. No, except lately, about a year ago, in Atlanta.

Q. And are you still selling Noboil in pints? A. Very little; yes, sir.

Q. Now, I notice in comparing your price list, sir, Commission's Exhibits 520 and 521, that your Noboil sells at a lower price, generally speaking, and correct me if I am wrong——. A. That is right.

Q. (Continuing) ——than Roman cleanser? A. That is right.

Q. Will you tell us the reason for that? A. When I bought the company, there was no fixed price; one price was low, and one price high.

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Q. Yes, and the documents we have show that, sir, but what I am asking you now is, why you have continued to

sell Noboil at a lower price than you sell Roman? Why is it not all the same price? A. Because Roman cleanser, that is advertised; we give cooperative advertising, and a lot of free samples and so on, while on Noboil there is no advertising at all; just deliver, that is all.

(Tr. p. 3042)

Q. Now, are Noboil and Roman cleanser sold in some of the same areas? A. Yes, sir.

Q. Now, I also notice on this price list, Mr. Riccardi, that you have different prices listed r designated for geographical areas called north, central and south? A. That is right.

Q. Would you explain why you have these different prices in the different territories? A. Well, the old territory has the lowest, the youngest the next price, and then the next youngest a different price, but it is according to the time.

Q. When you say youngest what do you mean? A. A few years.

Q. That the product has been selling in that territory? A. That is right, a few years.

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(Tr. p. 3045)

Q. My question was: Do you manufacture it, or do you buy it from someone else? A. We manufacture the bleach.

Q. Is your bleach a sodium hypochloride solution? A. That is correct.

Q. What percentage is your bleach? A. Five and a quarter per cent.

Q. Is that true of both Noboil and Roman Cleanser? A. That is correct.

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Q. Does your liquid bleach have any special quality or unique feature that makes it better than anybody else's bleach? A. Not exactly.

Q. Does your company produce private label bleaches, sir? A. Not until about a month ago; two months ago, in Miami, Florida.

Q. And, can you tell us what percentage of your liquid bleach is sold in grocery stores? A. How do you mean? I don't understand.

Q. Let me restate it; perhaps that would be better. A. All right.

Q. Is your liquid bleach sold in drug stores and five

(Tr. p. 3046)

and ten cent stores? A. Not drug stores; only the grocery stores.

Q. Do you have any idea how much of your liquid bleach is sold in chain stores rather than in independent stores? A. Approximately sixty per cent.

Q. And, when I use the word "chain," I should have explained; four or more stores. A. Four or more stores?

Q. Four or more stores? A. Yes.

Q. What liquid bleach producer is your principal competitor? A. Clorox and some small one.

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Q. Now, in selling your liquid bleach do you pay the freight on the bleach to your customers' locations? A. Correct.

Q. Do you have a market research department in your company? A. No, sir. The newspapers; what we get from newspapers

(Tr. p. 3047)

and magazines.

Q. What magazines do you have reference to, sir? A. I think it is the newspapers. I couldn't recall the magazine.

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Q. Now, how does your company, sir, go about either getting more shelf space for liquid bleach or an increased

(Tr. p. 3048)

amount of shelf space than it already has? A. That is something that I can not answer. It is up to the grocer; what he wants to give us. I can not answer that. There is no certain way to get it.

Q. Let me ask you this, sir: What do you do to try to influence the grocer? A. Promote sales, and then he will probably give me more shelf space.

Q. Those are the various promotions we were talking about earlier that you have used? A. That is right, to get more space, because I was a grocer at one time myself, but it is related to the amount; how fast the product goes, you know, and they accord the amount of space relative to the sales they make.

Q. All right, sir. What determines how fast the product will go? A. That is according, you know, to how fast, or how old it is on the market, and if you keep it before the public by advertising.

Q. Now, in selling your liquid bleach, do you use brand pennants or window bolsters or anything like that? A. We had it before; not now any more. We have, what do you call it, signs, you know, painted signs, billboards and things like that.

Q. Why have you discontinued the brand pennants and window

(Tr. p. 3049)

bolsters? A. Because we changed. Sometimes they

bothered so frequently, and it doesn't pay neither because the grocer don't want to be bothered any more.

Q. Are you familiar with the new type of handles that are on the Purex and Clorox quart sizes? A. They told me, yes, sir.

Q. Have you seen them yourself, sir? A. I have seen them. They brought a bottle from the south, I think.

Q. Has your company, since 1952, placed any new handles on its bottles? A. No. I tried a new handle about three years ago; about three years ago.

Q. I didn't quite follow you there. A. I started with one on my quart size, with a handle, about three years ago. It was my own idea.

Q. Was that a new type of handle, sir? A. A new type, yes, sir.

Q. What was the difference about the new type than the old type? A. There was an old type. It never was on the quart size. It wasn't like that. There never was a handle on the quart size, I believe, but if there was, it wasn't as good as the one that I originated.

(Tr. p. 3050)

Q. Was that before the Purex and the Clorox companies had the handle? A. Oh, yes, much before, yes.

Q. Now, does your company have any special promotions or sales drives in the spring or fall of the year for liquid bleach? A. Annually, we always have something. We either have ten cents off or now we have so much off a label on gallons.

Q. And, how long will that drive continue, sir? A. Usually one month or four weeks.

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Q. Does your company have any scientific research facilities? A. Not exactly, no.

Q. When you say "not exactly," what do you mean? A. Well, I mean that we make a bleach, and, of course, now we have our chemist down at Miami. He works on

(Tr. p. 3051)

research now, but not before, no, we never had.

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Q. Can you tell us—Let us take the City of Detroit, sir: how does the price for your Roman cleanser on the grocer's shelf compare with the price of Clorox? A. The price; you mean the product?

Q. Yes. A. The product?

Q. Yes. A. It is almost the same; some of it sells for a penny more and some others sell for just the same.

(Tr. p. 3052)

Q. Now, let me ask you about another situation; For example, how about Memphis, Tennessee, the same question as to what the grocer generally charges for Clorox and what he charges generally for Roman cleanser? A. Roman cleanser in Memphis is a lower price. We sell a little lower there.

Q. Now, let me ask you the same question, sir, with reference to Atlanta, Georgia, as to, generally speaking, what the grocer charges for your product and for Clorox? A. They charge cheaper.

Q. They charge cheaper? A. Yes, because we sell cheaper, you see.

Hearing Examiner Haycraft: Do you sell both Roman Cleanser and Noboil in Atlanta?

The Witness: Yes, sir.

Hearing Examiner Haycraft: Are they both lower than Clorox?

The Witness: Both are lower than Clorox, yes, sir.

Hearing Examiner Haycraft: Noboil is lower than Roman Cleanser?

The Witness: Noboil is lower than Roman Cleanser, because it is not advertised there. We just make it, sell it, and deliver; that is all.

By Mr. Tincher:

(Tr. p. 3053)

Q. How about in Nashville? A. The same price. They ask the same price as Atlanta?

Q. And that is where your's is cheaper than Clorox? A. That is right.

Q. And Noboil is still cheaper? A. That is right.

Q. Is there any city in your sales area or in any rural community where—as far as that is concerned—that you know of, where your bleach sells for more than Clorox on the grocer's shelf? A. I never hear that. It might be, but I never hear that, no.

Q. Does your company have any interest in or any control over other liquid bleach producers? A. No, sir.

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(Tr. p. 3054)

Q. Certainly not. You just told us that since 1952 your costs of production and distribution have gone up? A. Yes, sir.

Q. Now, my question is: Have you been able to pass on all of those increased costs to your customers since 1952, sir? A. Yes, from time to time.

Q. Can you tell us, sir, the first year when your company actually commenced producing liquid bleach? A. 1918; at the end of 1918. In 1919, I started to distribute.

Q. And was anyone else distributing at that time? A. Not in Detroit, there wasn't nobody. Nobody knew anything about the bleach.

Q. Did you start in Detroit only? You weren't selling any place else? A. Yes, sir, that is correct.

Q. That is correct? A. Yes, sir.

Q. Mr. Riccardi, you say that you are using the price off label in Detroit at the present time? A. Yes, sir, at the present time, for four weeks.

Q. For four weeks? A. Yes, sir.

Q. When will that period be over?

(Tr. p. 3056)

A. The 23rd of this month, it will be four weeks after—July.

Q. It just started yesterday? A. July 21st, I think, if I am correct.

Q. Mr. Riccardi, are you familiar with the fact that The Procter & Gamble Company purchased the Clorox Chemical Company? A. Yes, sir.

Q. Last fall? A. Yes, sir.

Q. You are aware of that? A. Yes, sir.

Q. What effect, if any, will that have on your business in selling liquid bleach? A. Now, I don't see any changes.

Q. You don't see any changes, you say? A. Now, it is the same as it was before.

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(Tr. p. 3060)

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Q. Mr. Riccardi, are your plants, altogether, are they

(Tr. p. 3061)

producing at full capacity? A. No, sir.

Q. Can you tell us approximately at what capacity they are producing? A. The capacity hours are about over,

about. My men work about forty hours a week. I would like to produce very much more. I have the machinery to produce much more, twice the amount, if we want to in the Detroit plant. In others, I can produce even more.

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(Tr. p. 3062)

CROSS EXAMINATION

By Mr. Royall:

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Q. You mentioned the territory you cover. Do you cover any part of Kentucky? A. Yes, I do. That I didn't remember at the time.

Q. Now, did you mention the bottling plant and warehouse at Tampa, Florida? A. We manufacture there, yes.

Q. You manufacture there? A. Yes, sir.

Q. All right, sir. A. We manufacture there.

Q. You acquired the Miami plant in June, 1958, did you not? A. The Miami plant was acquired several months ago.

Q. Several months ago? A. The date I don't recall, but it was in March or April.

Q. In March or April? A. Of this year.

(Tr. p. 3063)

Q. Of this year, 1958? A. Yes, we bought it in March.

Hearing Examiner Haycraft: You weren't in that market in 1956 or 1957?

The Witness: I was in that market, in Miami. I was in that market. I was serving it from Tampa.

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By Mr. Royall:

Q. Now, I believe you have acquired some land for use near Cincinnati, at Lawrenceburg, Indiana? A. Yes, sir.

Q. Is that correct? A. That is right.

Q. Sixteen acres? A. That is right.

Q. Now, you stated, I believe, that you started business in 1918 or 1919? A. In 1918. I started distributing in 1919.

Q. You started with very little capital? A. Very—a few thousands.

Q. Not too much capital? A. Quite a few thousands, though; not so much.

Q. Now, the net worth of your company is about $1,200,000, isn't it?

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(Tr. p. 3064)

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A. The net worth is more than that.

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Q. Would it be a million and a half? A. More than that.

Q. Two million? A. Approximately that; a little less.

Q. Approximately two millions? A. Yes.

Q. Now, during that period that you have been in operation, and since your incorporation, you have paid dividends, have you not? A. Sure.

Q. And, your dividends have increased until they are about seventy-five or one hundred thousand dollars a year? A. Oh, more than that.

(Tr. p. 3065)

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Q. You say it is over that? A. I would say the dividends are one hundred to a hundred and twenty-five thousand dollars a year. I do not know that now I do not know.

Q. All right. Now, what have been the general—strike that question, please. Your principal market is the Detroit area, is it not? A. That is right, vicinity and Michigan.

Q. Is it not a fact that in the last year conditions of employment have been bad here? A. That is right.

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Q. Has that not affected the volume of all business, including your own? A. Yes.

Mr. Tincher: Wait a minute. I object to that,

(Tr. p. 3066)

your Honor.

Hearing Examiner Haycraft: Overruled. It is bound to have its effect upon the figures.

Mr. Tincher: Yes, if established through correct channels if such be the fact.

Hearing Examiner Haycraft: I will almost take judicial notice of that.

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(Tr. p. 3067)

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Q. Now, you spoke of making a private bleach; private label bleach in Miami.

(Tr. p. 3068)

A. That is right.

Q. What is the name of it, do you recall? A. We make that for the Food Fair. Exactly the name, I do not recall.

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Q. Now, there are a good many private label bleaches sold in your territory, are there not?

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Q. And a good many of them are sold to the large chains, are they not? A. Yes, sir.

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(Tr. p. 3071)

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Q. Now, I will hand the witness this Respondent's Exhibit 31 for identification, which purports to be a list of the private label bleaches sold in the territory described by the witness, and I have asked the witness to identify it, which he knew, and recognized, and he said he would have to have your assistance, Mr. Lancaster.

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(Tr. p. 3073)

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A. Bright Sail, A & P; Gardner and Stowell; Bright Sail again, A & P; Clarion; then again Bright Sail, for A & P; Best White, Blue Grass, Blue Grass, Chlorite; Kroger's again; Park View, Park View Stores in Cincinnati; Del Haven; local jobber in Cincinnati; Dot, Jansen; Emergy is Associated Grocers; White Cap is Albert's price label; Cleveland; Bright Sail, A & P; Shirley Ann, I do not know. Bright Sail, A & P, Atlanta; Bright Sail, A & P; Energy, A. G. Stores, independent.

Southern Manor, Colonial. Sparkling White, I do not know. Bright Sail, A & P, Jack and Jill, Indianapolis; Bright Sail, Jack and Jill packed by Fulker in Dayton, Ohio; White Cap is Alberts; Jackson Special is National Food Stores in Indianapolis, Indiana. Pay Day, I do not know.

Now, Louisville, Kentucky, Bright Sail, A & P; Hy Clo by Kroger; White Arrow is Dixie. Miami, Bright Sail, A & P; Fyne Tex, Food Fair.

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(Tr. p. 3074)

The Witness: Blue Ribbon. We are not in Peoria.

Saginaw, Bright Sail, A & P;

Tampa, Florida, Bright Sail, A & P; Fyne Tex, Food Fair. White Arrow, Dixie; White Arrow.

Toledo, Riddle's Old Mission. I never heard of Thompson.

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(Tr. p. 3075)

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By Mr. Royall:

Q. I mean, you sell more of your brand here than anybody else sells in Detroit, do you not?

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A. Can I answer that?

Q. Yes. A. The largest share in Detroit here?

(Tr. p. 3076)

Q. Yes. A. Not always; not in every place.

Q. Not in every place? A. In Detroit, yes; not in every place.

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(Tr. p. 3079)

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Q. Didn't you have free goods in Kroger's on May 25, 1956? A. The time, again? And the town?

Q. In Atlanta, on May 25, 1956?

Mr. Lancaster: I think what you are referring to there are pint free samples.

The Witness: Free samples.

By Mr. Royall:

Q. Free samples? A. Yes, for store opening.

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(Tr. p. 3080)

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Q. One free pint with a quart at Colonial Stores in Atlanta on October 18, 1956? A. No. The trouble is, they request it for a store opening, and we give them a certain amount when the store opens. They have the clerk to give one bottle combined with one sale.

Q. Didn't you do that in other stores also? A. Each one gave the same; gave the same quantity.

Q. Now, in 1956, didn't you give five cents off on gallons or half gallons and three-quarter gallons and gallons from September to December, in Akron, Atlanta, Cincinnati, Cleveland, Columbus, Grand Rapids, Jacksonville, and Charleston, West Virginia? A. Yes, sir.

Q. Saginaw and Toledo? A. Yes, sir; off label or off the price?

Q. Off label or off the price? A. I don't recall that.

Q. You don't recall that? A. No, sir.

Mr. Royall: I don't want to put on evidence to

(Tr. p. 3081)

contradict this witness.

Mr. Lancaster: Let me straighten that out for you. We had a general deal of five cents off label on three-quarter gallons and gallons, but not half gallons in all territories in the latter part of the year.

The Witness: That is right.

By Mr. Royall:

Q. Off label? A. Yes, sir.

* * * * *

Q. Now, did you have a promotional allowance in Atlanta in October, 1956, of 35 cents per case of three-quarter gallons, and twenty-five cents per case on gallons? A. Off labels, you say?

Q. That is off label? A. Thirty and five is evidently the thirty-five cents. That is off label.

Q. Now, did you have a price off label of five cents on gallons, halves and three-quarters in September and December, 1957, on a large part of your territory?

Mr. Lancaster: It was on the same deal as in 1956. Five cents on three-quarter gallons and gallons only, and it was in the month of November; a four week

(Tr. p. 3082)

period again.

Mr. Tincher: November, you say?

Mr. Lancaster: Yes.

By Mr. Royall:

Q. Now, did you give pints with purchases of another size in the Kroger Stores and in the Campbellton Plaza Stores, and in Atlanta in February or March of 1957? A. No.

Mr. Lancaster: No, not directly. That may have been the local man's idea of it, or the clerk's.

By Mr. Royall:

Q. But you didn't give free goods?

Mr. Lancaster: We gave them but not in that way.

Mr. Royall: But you gave them free goods and they put them up; is that right?

The Witness: I do not know if we did, and I know we wouldn't have given it to them.

By Mr. Royall:

Q. But you gave them a free pint? A. They requested it through the broker for the store opening. O'K for so many cases, you know, and that is it. That is the way I will do it.

Q. But you did give it to the brokers for them? A. To go direct to the customer. A request by the broker prior to a store opening only.

(Tr. p. 3083)

Q. And your household cleaning campaigns, were they in the fall only? A. They might be in the spring, and the fall some times.

Q. In the same year? A. How the year goes.

Q. In the same year? A. It might be.

Q. Now, do you recall whether they were or not in 1957? A. We had one five cents off in November.

Q. You did not have any in the spring of 1957? A. No.

Q. All right. Now, in 1958, did you have this same free pint bottle situation which you have described, at Cincinnati and Cleveland—in March of 1958? A. This was only for store openings.

Q. That was only for store openings? A. Even today we have a rule over there that when they open a store, we send so many cases free of pints to give away.

Q. Now, did you have in 1958 an eighteen cents per case off promotional allowance in Florida? A. Correct—no, six plus twelve.

Q. Yes, six plus twelve. A. That is the place, yes, we had it; one quarter.

Q. Now, did you have a five cent price off label in

(Tr. p. 3084)

Cleveland, Columbus and Asheville in March of 1958? A. No. In 1958, we are just beginning now.

Mr. Lancaster: We just started yesterday.

By Mr. Royall:

Q. Yesterday?

Mr. Lancaster: Yes.

By Mr. Royall:

Q. I see. Now, did you at any time give one free with six? A. That is a long time ago in the south. That is introductory.

Q. Now, in using your various promotions, did you vary them from time to time? A. According to what is best.

Q. It is best at times to have variety, and to change them, is it not? A. That is correct, yes.

Q. Now, on this exhibit which is marked Complainant's Exhibit No. 522, which was put in by the Commission's counsel, I notice a column called "1 with 6." A. That is right.

Q. Now—— A. (Interposing) That is introductory, years ago, yes, sir.

Q. It was as late as 1954, wasn't it?

(Tr. p. 3085)

A. That is right.

Q. Is that right? A. Yes.

Q. And, some in 1956? A. That I do not know, in 1956, when it took effect. I do not know. Maybe. There is a man in our office for that, like I told you.

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(Tr. p. 3086)

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Q. Now, do you know what this general miscellaneous is? A. Yes, I do know that.

Q. Tell us about that. A. Well, it might be a clock, or what do you call it, a big thermometer; it might be a pot holder. Some times we will give little things as a present like some pencils to mark their grocery list; things like that, and a case knife.

Q. What is that? A. A case knife.

Q. Now, is it right that you raised the price in the northern party of your territory on February 17th of this year? A. Yes, that is right; yes, sir.

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(Tr. p. 3091)

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REDIRECT EXAMINATION

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(Tr. p. 3094)

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By Mr. Tincher:

Q. Now, when you have the price off the label, is that to new stores only, or is that to all stores? A. All stores. That goes for everybody.

(Tr. p. 3095)

Q. Now, sir, would you answer the question the Examiner just asked as to how you sell this liquid bleach; whether you use brokers or whether you use salesmen? A. We have in Michigan—Michigan consists about half where we have no broker, and the other half goes through the broker, you see. And then in the south, right near some places, it is mostly brokers, but the little places, some times we do it ourselves.

Q. When you say the little places, do you mean the rural areas? A. Well, some times you can't find a broker and we do it ourselves, but the majority down south, almost all of it, is under brokers.

Q. How about the City of Detroit? A. Detroit is not. Some part of Michigan there is no broker and the other is under a broker, because we have had a salesman for a long time, and I don't want to fire him, you know. I keep him instead, but we have brokers up there.

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(Tr. p. 3096)

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Mr. Tincher: Your Honor, at this time, I would like to have marked for identification as our Exhibit 519B, a one page document showing Roman Cleanser and

(Tr. p. 3097).

Noboil sales by cases.

* * * * *

Hearing Examiner Haycraft: Do you offer it at this time?

Mr. Tincher: Yes, sir.

Hearing Examiner Haycraft: There being no objection, Exhibit 519-B will be received in evidence, in camera.

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(Tr. p. 3102)

* * * * *

Room 511-C
United States Court House
Foley Square
New York, New York
June 25, 1958

Met, pursuant to notice, at 2:00 p.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 3103)

PROCEEDINGS

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Paul C. Olsen

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you give me your full name and address?

The Witness: Paul C. Olsen. 14 Sutton Place South, New York City.

DIRECT EXAMINATION

By Mr. Deveny:

Q. Dr. Olsen, will you tell us what company you are associated with? A. I am director of Marketing Research of Topics Publishing Company.

(Tr. p. 3104)

Q. What are the publications of that company, sir? A. We have five. Food Topics, Food Field Reporter, Drug Topics, Drug Trade News and Forecast for Home Economics.

Q. What do the "Food Topics" and the "Food Field Reporter" publications deal with, sir? A. "Food Topics" is addressed to retail grocers and "Food Field Reporter" is addressed to manufacturers and other suppliers in the food field and to other persons who have a concern with food products.

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(Tr. p. 3144)

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Q. I will hand you Commission's Exhibit 529 for iden-

tification, Dr. Olsen, and ask you, are you familiar with that document? A. Yes.

Q. Can you describe that document for us, please, sir, briefly? A. This document is reprinted from the September 16, 1957 issue of "Food Field Reporter" and lists, where available, the sales manufacturing costs, earnings before taxes, taxes on earnings and after taxes of those corporations which are publicly held and issue such figures in the various categories which we regard as in the food trade.

Q. Were those prepared at your direction and under your supervision, sir, those compilations? A. Yes.

Q. That was published in—is this the document that you referred to prior to my marking the document? Is this the document you referred to being made up from Moody's and Standard & Poor's available financial statistics? A. Yes. I want to emphasize, it is not an original work. It is merely bringing together of previously published

(Tr. p. 3145)

figures.

Mr. Deveny: Your Honor, we offer 529 at this time.

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Mr. Deveny: Your Honor, may I amend my offer? I will limit the offer, Your Honor, to page 1 and the chart thereon showing 25 top earning grocery manufacturers in 1956.

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(Tr. p. 3146)

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(The document heretofore marked Commission's Exhibit 529 for identification was received in evidence.)

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(Tr. p. 3147)

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Room 511-A
United States Court House
Foley Square
New York, New York

June 26, 1958

Met, pursuant to adjournment, at 2:00 p.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 3148)

PROCEEDINGS

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Samuel Mendleson

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Give me your full name and residence address.

The Witness: Samuel Mendleson.

* * * * *

DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Mendleson, what company are you with, sir? A. B. T. Babbitt, Inc.

Hearing Examiner Haycraft: What was that name?

The Witness: B. T. Babbitt, Inc.

Q. What is your position with that company, sir? A. I am chairman of the Board and treasurer.

Q. How long have you been with the Babbitt Company?

A. Thirty-eight years.

Q. What other positions have you held in the company besides

(Tr. p. 3149)

your present one, sir? A. For seven years prior to this year I was president. For five years prior to that, I was chairman of the Board and vice-president.

Q. What products does your company produce or what activities does it engage in? A. We are engaged in the manufacture and sale of household cleaning products. Bab-O Cleanser, Glim Liquid Detergent. Various brands of lye. Aerosol products, insecticides, Hep Oven Cleaner. Air-Gene Room Deodorant and others. Vano Starch and others.

Q. Has your company produced a liquid bleach? A. Yes.

Q. Does your company have a principal product, sir? A. Our principal product is Bab-O.

Q. And approximately what percentage of your company's business is accounted for by the sales of Bab-O? A. Approximately 40%.

Q. Where is your liquid bleach produced, where has it been produced, sir? A. Oakland, California.

Q. Under what name? A. Vano.

* * * * *

(Tr. p. 3150)

* * * * *

Q. How long has the production of Vano Bleach been under the control of the Babbitt Company? A. Since August, 1956.

Q. What were the circumstances, sir, that created that control? A. We acquired the Chemicals, Inc. in August, 1956. It was one of Chemicals, Inc.'s products.

Q. Is Vano Liquid Bleach a household or an industrial type of—— A. (Interposing) Household.

Q. And is it produced only in the one location at Oakland? A. Oakland only.

Q. Where has Vano Liquid Bleach been sold, sir, by your company? A. In the immediate area of San Francisco, Oakland. Perhaps shipped out two hundred miles.

Q. What has determined, sir, the sales area of the liquid bleach? A. I didn't hear the question.

Q. What has determined the sales area of the liquid bleach? A. The freight cost is the determining factor in the area that we can serve out of that plant.

Q. Has the Vano Liquid Bleach been sold through brokers or by direct salesmen?

(Tr. p. 3151)

A. Direct sales. Direct salesmen.

* * * * *

Q. I hand you what has been marked as Commission's Exhibit 530, and I will ask you if you can tell us what that is? A. This is a memorandum showing the sales of Vano Liquid Bleach by cases for the years 1952 to 1957, inclusive,

(Tr. p. 3152)

covering both quarts and half gallons.

Q. Was that prepared at your direction in answer to the subpoena, sir? A. Yes.

Mr. Tincher: I offer Commission's Exhibit 530 for identification, sir.

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(Tr. p. 3153)

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By Mr. Tincher:

Q. I notice some figures appearing here for the years '55 and '56, which do not appear for other years.

Will you tell us without revealing the figures themselves what those figures represent, why they are there? A. The figures in the parenthesis here are out of the total of the year's sales and show the number of cases sold in that year on a 10% discount basis.

(Tr. p. 3154)

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(Document referred to, heretofore marked Commission's Exhibit 530 for identification, was received

(Tr. p. 3155)

in evidence in camera.)

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By Mr. Tincher:

Q. I hand you Commission's Exhibit 531 for identification, and I ask you if you can tell us what the information contained thereon is? A. This is a wholesale price list of Vano Liquid Bleach covering the case containing 12 quarts, the price in effect, January to June, '56, the price in effect July, '56 to August, '57, and the price put into effect on August, '57. Also prices of the Vano Liquid Bleach which is packed six half-gallon bottles to the case and the prices for the same period.

Q. Was that prepared at your request and direction, sir? A. Yes, sir.

Q. Has Vano Liquid Bleach been sold by your company since it had control over it in anything other than the quart and half-gallon size? A. No.

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(Tr. p. 3156)

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Mr. Tincher: I offer Commission's Exhibit 531 for identification, sir.

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(Tr. p. 3157)

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(Document referred to, heretofore marked Commission's Exhibit 531 for identification, was received in evidence.)

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(Tr. p. 3163)

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Q. Mr. Mendleson, I will hand you Commission's Exhibits 534 through 536 for identification, and ask you to tell us what those are, sir? A. These are the annual reports of B. T. Babbitt, Inc., for the years 1955, 1956, and 1957.

Q. Are those reported on a calendar year, rather than a fiscal year, sir? A. On a calendar year.

Mr. Tincher: I offer the exhibits at this time, sir.

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(Tr. p. 3167)

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(Documents referred to, heretofore marked Commission's Exhibits 534 and 535 for identification, were received in evidence.)

By Mr. Tincher:

Q. Mr. Mendleson, have you advertised the Bab-O Liquid——

(Tr. p. 3168)

Vano Liquid Bleach since you have had it? A. No. There has been no advertising except a cooperative adver-

tising plan which was minute. The most money spent on the plan, on the cooperative plan since we acquired the product was $500 in one year.

Q. Is there any reason for not advertising it? A. We were not prepared to make investment spending in attempting to establish the brand as a household trademark with the housewives' acceptance.

Q. Have you promoted the Vano Liquid Bleach since you have had it and by that, I mean, any type of promotion which would reduce the price of the bleach to the housewife or offer her something in addition to the product? A. I know of one occasion when for a short period we allowed 10% off the list price. Also we have had an on-the-label-premium offer which was a self-liquidater.

Q. Was that the extent of the promotion of the product, sir? A. Yes.

Q. Now, have you granted your liquid bleach customers' price discounts for quantity purchases? A. Yes.

Q. What's the theory in doing that, sir? A. There are savings to be effected by larger sales in that you can combine the product with other products and make up straight carloads and straight truckloads and thereby effect

(Tr. p. 3169)

freight savings.

Q. Is that freight savings to you as the producer? A. Yes. The products are on a delivered basis.

Q. What per cent did you grant on that quantity discount, sir, to your customers? A. The price list shows. I don't know offhand.

Q. While you have had the Vano Liquid Bleach, have you received any in-store promotions of that product? A. Practically none.

(Tr. p. 3170)

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Q. What have been the market factors which determine whether or not Vano Liquid Bleach sells well?

* * * * *

A. I think Vano Liquid Bleach would sell well or not sell well depending upon the amount of advertising and promotional support it received.

In order to establish a franchise for your product, it must have consumer acceptance, and assuming that the product is a good product, the only way that you can create consumer acceptance is by advertising and various types of promotions such as couponing, sampling, et cetera.

* * * * *

(Tr. p. 3171)

Q. In the Vano Liquid Bleach sales area, who were the competitors in liquid bleach, sir? A. Well, the principal competition was from Clorox Liquid Bleach and Purex Liquid Bleach.

Q. Does your company sell a dry or a powdered bleach? A. Yes.

Q. Is that product competitive with your liquid bleach? A. We don't feel that powdered bleaches compete with liquid bleaches since the sodium hypochlorite liquid bleaches are more in the heavy duty category, and the powdered bleaches are in the light duty area.

I don't feel that liquid bleaches and powdered bleaches are directly competitive.

Q. In setting your liquid bleach prices, what factors do you consider, sir? A. Well, our prices on Vano Liquid Bleach have been determined by the cost of the finished product and also the competitive situation.

Q. What do you have reference to, sir, when you say "the competitive situation"? A. Vano Liquid Bleach is a very poor seller in the area. It is competing with one very strongly entrenched brand, Clorox. We feel that we could not sell our product since it is not supported by advertising or sales promotion unless it enjoyed a somewhat lower shelf price than its competition.

(Tr. p. 3172)

Q. Will you tell us, do you use any brand name besides Vano in selling liquid bleach? A. No.

Q. Do any of the products of your company, sir, compete with any products of the Procter & Gamble Company?

* * * * * *

A. Yes. Vano Liquid Bleach competes with Clorox; Babo Cleaner competes with Comet Cleaner; Glim Liquid Synthetic Detergent competes with Joy.

* * * * *

Q. You have mentioned, sir, that the Vano Bleach is a sodium hypochlorite type bleach. What percent solution is the Vano Liquid Bleach? A. Five and a quarter per cent sodium hypochlorite.

Q. Since you have had control of the company, has the Vano Bleach been manufactured by your company or has bleach concentrate been purchased from others and been cut? A. No. We have manufactured the product from chlorine gas and the alkalizer.

Q. How have you attempted to obtain or to increase shelf space for your Vano Liquid Bleach since you have had it?

(Tr. p. 3173)

A. Our salesmen are instructed to get as much shelf space for our products, including Vano Liquid Bleach, as possible.

Q. How do you go about doing that, sir?

* * * * *

A. They attempt to sell the grocer as much of each of our products, including liquid—Vano Liquid Bleach—as possible.

It is our experience that a product will enjoy more shelf space if the grocer has a large quantity on hand.

By Mr. Tincher:

Q. Is there any aid in obtaining shelf space for a given product such as bleach if you can offer the grocer a complete line of related products? A. I think there is, yes.

* * * * *

Q. Does the Vano Liquid Bleach have any unique or special ability or property which aids it? A. No.

Q. Do you know what percent of the Vano Liquid Bleach has been sold in grocery stores as contrasted to drug or

(Tr. p. 3174)

department or variety stores? A. I think practically all of the Vano Liquid Bleach is sold through grocery channels.

Q. Do you belong to or know of any trade association of liquid bleach producers? A. No.

* * * * *

Q. My question is, do your direct salesmen sell your Vano as well as your other products? A. Yes.

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(Tr. p. 3175)

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Q. Let me ask you, sir, is there any reason why your company uses direct salesmen in selling its products, rather

than brokers? A. We prefer and use our own men, salesmen, wherever we can afford to. And we do use our own men in the areas where our sale is sufficiently good to support our own sales organization. In other areas we use brokers.

Q. Why do you have that preference, sir?

* * * * *

A. Well, we think that a company can do a better job in a given area by using their own men. Their own men are giving their full time to the products of the company, whereas, on the other hand, a broker's salesman has many products of many companies to sell. I think it is the—it is agreed that a company that can afford to maintain its own sales organization is in a better position and does so.

Q. Do you pay the freight on your liquid bleach shipments to the customer? A. Yes.

* * * * *

Q. Mr. Mendleson, are the competitive problems, the basic

(Tr. p. 3176)

competitive problems in selling cleaners and soaps and detergents any different from those in selling a liquid bleach? A. Not in my opinion.

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(Tr. p. 3181)

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Q. In the sales area for Vano Liquid Bleach, in what section of the grocery store is the liquid bleach generally found? A. I think liquid bleach is generally found adjacent to the soap section.

* * * * *

Samuel Mendleson—Direct

(Tr. p. 3185)

* * * * *

Q. Are you familiar with the fact that the Procter & Gamble Company acquired the Clorox Chemical Company approximately in August of last year? A. Yes.

Q. What effect, if any, will this acquisition have on your Vano Liquid Bleach business?

* * * * * *

A. Well, from this point on, it isn't going to have any effect, because several months ago we decided to discontinue manufacturing the product.

Q. And why, sir?

* * * * *

A. In the first place, we have had a policy since 19—approximately 1953—not to compete unnecessarily with the soapers.

We acquired the Vano Liquid Bleach in August of 1956, and have not promoted the product or advertised the product since the franchise of Clorox was so strong, so I feel that one of the contributing factors to our decision to discontinue the product was the acquisition of Clorox by Procter & Gamble, since it was obvious that we would not, under these conditions,

(Tr. p. 3186)

entertain any thought of establishing a satisfactory franchise on Vano Liquid Bleach.

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(Tr. p. 3191)

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Hearing Examiner Haycraft: Maybe I can help cut the Gordian Knot here. You may ask him why they discontinued the manufacture of Vano.

Mr. Royall: Your Honor, we object because——

Hearing Examiner Haycraft: I know you are going to object.

Mr. Royall: Because he already asked.

Hearing Examiner Haycraft: And I will overrule the objection and let him answer that question, to see whether I am right or he is right.

Mr. Royall: You are right, I know, in what you said, but the point is, this is the same question asked again.

Hearing Examiner Haycraft: No, it isn't. It is different. According to his theory—according to my theory

(Tr. p. 3192)

it is the same.

Mr. Royall: I am not saying that. I say it is the same question.

Hearing Examiner Haycraft: You answer the question why did you discontinue the manufacture of Vano Liquid Bleach two months ago?

The Witness: Well, it has been our policy since 1953 not to compete with the soapers unnecessarily. In the acquisition of Chemicals, Inc., I think we acquired a liquid bleach. We did not support the product and about two months ago, after giving considerable consideration to the liquid bleach industry, we decided to discontinue the product since, in the hands of Procter & Gamble the Clorox franchise was one that we did not wish to meet head-on.

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(Tr. p. 3205)

Q. All right, sir, now let me ask you if the nationally advertised and distributed product—I suppose we better limit ourselves to liquid bleach—has any advantage over a regional, or local, liquid bleach?

* * * * *

A. I think advertising-wise, a nationally distributed brand has an advantage over local brands in that advertising can be bought at a cheaper rate per thousand listeners or viewers than on a local basis.

* * * * *

Q. Now let me ask you the same question, sir, with respect to a nationally promoted product, whether—such as liquid bleach—whether it has any advantage over a product being promoted regionally or locally?

* * * * *

(Tr. p. 3206)

A. I think there is an advantage in being able to put on national promotions for a number of reasons. No. 1, you don't have the problem of overlapping territories where one market has the promotion and the next market doesn't have the promotion with the resultant confusion.

No. 2, promotions are usually supported by advertising and if you can buy that advertising to support the promotion on a national basis, you are going to buy it at a cheaper rate.

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(Tr. p. 3212)

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Q. Mr. Mendleson, is your company still producing the Vano powdered bleach? A. Yes.

* * * * *

(Tr. p. 3215)

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By Mr. Tincher:

Q. Mr. Mendleson, the prices in red ink that appear now on Commission's Exhibit 531, have you put those on? A. Yes.

Q. To reflect the discount schedule? A. Yes.

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(Tr. p. 3218)

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Room 511-A
United States Court House
Foley Square
New York, New York
June 27, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

PROCEEDINGS

(Tr. p. 3219)

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(Tr. p. 3228)

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Mr. Tincher: Miss Reporter, will you please mark as Commission's Exhibit 538A, B and C, a three page, stapled document, a mimeograph copy, a blue copy, dated April 23, 1958 entitled Television Spot Announcements for designated periods, designated stations, designated cities, for Clorox Chemical Company and the Clorox Company.

(The document referred to was marked Commission's Exhibit 538A, B and C for identification.)

Mr. Tincher: Mr. Examiner, at the hearing in San Francisco, we requested Mr. Schaefer to prepare for us an exhibit breaking down an exhibit already of record, dealing with television spot announcements.

Hearing Examiner Haycraft: Do you remember the number of that exhibit?

Mr. Tincher: I realize I should have that; I am sorry, I don't. The exhibit I refer to was received of

(Tr. p. 3229)

of record and then it was ascertained that spots were lumped together and we could not tell whether they were 2 minute spots, 60 second spots, ten seconds, just how long they were. They indicated they would prepare the exhibit, breaking it down.

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Hearing Examiner Haycraft: 407A, B, C and D, Television Spots, January 1957-July 1957, and some other dates that I don't know.

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Mr. Tincher: Yes, that is it. I offer the document at this time.

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(Tr. p. 3230)

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(The document, heretofore marked for identification Commission's Exhibit 538A, B and C, was received in evidence.)

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(Tr. p. 3231)

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Courtroom No. 1, Room 805
United States Post Office and
Courthouse
Cincinnati, Ohio

July 7, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 3232)

PROCEEDINGS

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Howard Joseph Morgens

was thereupon recalled as a witness, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

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(Tr. p. 3236)

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By Mr. Tincher:

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(Tr. p. 3248)

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Q. Now, Mr. Morgens, when you were here before you discussed the contracts The Procter & Gamble Company has with automatic washing machine manufacturers and automatic dishwashing machine manufacturers. I have just one question concerning those, and that is this: Is it not a fact in '56 and '57 The Procter &

(Tr. p. 3249)

Gamble Company spent many millions of dollars acquiring and carrying out its contractual obligations under those contracts?

* * * * *

A. If I must answer that question with a yes or no answer, the answer is no.

Hearing Examiner Haycraft: You may explain your answer.

The Witness: From the time standpoint, Tide time period standpoint——

* * * * * *

The Witness: ——we spent money advertising Tide, which from Tide's own desires wanted to feature the name of a washing machine manufacturer, washing machine manufacturing company as recommending Tide. So it did that because a competitor——

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(Tr. p. 3250)

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Mr. Tincher: Mr. Examiner, I'd like an explanation, but this is a defense against something that may be new to this. We're not charging anything wrong with this. We just want to know if it isn't a fact that millions of dollars were spent in the process of doing it. Now, whether that is the subject of another case or not, and the respondent has a defense to it, we're not interested in.

Hearing Examiner Haycraft: That may be true. This witness is not an ordinary witness. He is the top official of the respondent. And while I recognize that probably many of these questions should await—the testimony should await direct examination of counsel for the respondent in defense matters, I'm going to be a little more liberal probably than usual in allowing him to make explanations as we go along.

However, I can see that he was going into now what would be a defense, and I will admonish the witness to try to answer this question as near as he can as to whether or not Procter & Gamble spent, we'll say more than a million dollars, or whatever generally speaking between a million

and a million and a half dollars, or what-not, to popularize or to advertise Tide or any other powdered soap or detergent used in washing machines and dishwashing machines.

The Witness: In answer to your question, yes, we did.

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(Tr. p. 3251)

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By Mr. Tincher:

Q. And the answer, Mr. Morgens, would be quite a few millions of dollars rather than just a million or a million and a half, wouldn't it?

* * * * *

A. I'd have to say quite a few million dollars to do what, Mr. Tincher?

By Mr. Tincher:

Q. To obtain contracts and to carry out your contractual obligations under the contracts. By that I mean the advertising that is involved, free samples to be supplied to the various manufacturers, the follow-up program involved, money spent to supervise it, and all those things.

* * * * *

A. Money in the size that you have mentioned, or anywhere near that size was not spent only to acquire those contracts.

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(Tr. p. 3252)

Q. Not to acquire them, no. To acquire them, and then to carry out your obligations under the contracts.

* * * * *

A. They were not spent only to acquire the contracts or

to carry them out. Those were not the reasons for those expenditures.

* * * * * *

Q. Well, whatever the reason was, the amounts is all I'm interested in, the amounts. A. We have spent——

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A. ——those amounts of money in support of Tide for a washing machine advertising story.

By Mr. Tincher:

Q. Right. My only question——

Mr. Royall: Wait a minute. Let him answer.

Q. Excuse me. Go ahead. A. We spent those amounts of money, in other words to support Tide.

Q. All right. Now, I just have—— A. As a distinction between your question and my answer.

Q. Yes. I have just one question. My question is, rather than the million or a million and a half that the Examiner suggested, it should have been several times that amount, shouldn't it?

(Tr. p. 3253)

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A. I don't honestly recall an exact figure. And when you say several times, that amount is a little vague. I think I had better say I don't know.

By Mr. Tincher:

Q. I'd suggest, then, in 1957 between four and five million dollars for the advertising of Tide and Dash under these contracts.

* * * * * *

A. If you can—If your question means did we spend that amount of money for advertising Tide and Dash, the answer is yes.

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(Tr. p. 3254)

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Q. My question is that instead of the million or a million and a half that the Examiner suggested was expended by Procter & Gamble, under the contracts, to advertise Tide and Dash in conjunction with automatic washing machines, should not the figures be closer to four or five million dollars in 1957? A. I don't know.

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(Tr. p. 3262)

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By Mr. Tincher:

Q. Well, while we're talking about that, Mr. Morgens, isn't it a fact that your company is under legal advice from counsel not to include Clorox in advertising promotions, or coupons or anything else while this case is pending? A. No, it is not, to my knowledge.

Q. Not to your knowledge. Whose knowledge would it be to? A. Well, it would be to my knowledge.

Mr. Royall: Do you want any testimony from counsel on that?

Mr. Tincher: We may just want some in view of that answer.

Mr. Royall: I'll be glad to answer. We haven't advised them not to do anything.

The Witness: We'd be glad to expand on that answer, too.

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(Tr. p. 3266)

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By Mr. Tincher:

Q. Now, Mr. Morgens, are the November, 1957 prices of Clorox, which included a price increase on two sizes, half

gallons and gallons, are those prices still in effect all over the country,

(Tr. p. 3267-A)

or have there been some changes in those prices?

* * * * *

A. There have been no further changes.

By Mr. Tincher:

Q. Well, with reference specifically to the quart size, has the Clorox quart been sold to retailers at $1.91 for a case or $2.01 for a case? A. I don't know the exact price, Mr. Tincher, but there have been no changes in the broad pricing of Clorox to the trade.

Q. Since the November—— A. Since the November changes.

There may have been one or two small cities where there has been some price adjustment in connection with selling a special bottle on a test basis. There has been no major change in Clorox pricing. There are experimental endeavors going on under our policy in a lot of places in the country. If you are aware of a price change, that would be the policy it falls under.

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(Tr. p. 3281-A)

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Q. Mr. Morgens, do you recall when you were testifying making the statement that Clorox has a higher share of the market than any P&G product has ever had, once again Clorox had a larger

(Tr. p. 3281-B)

share than Tide and Cheer combined? A. I recall making a statement to the effect that Clorox has a larger share

of market than any P&G product, and that it has a larger share of market than Tide and Cheer combined. I don't recall making the statement that it has a larger share than any P&G product ever had, because we have been first in some fields with a product and I suppose for a very short time we may have even had a hundred percent of the market when we will first bring out some type of new product, and our history is a long time.

I hope I didn't say any time in our history.

Q. All right, sir. What period of time did you have in mind? Did you mean currently? A. I mean currently, yes.

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(Tr. p. 3287)

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Mr. Tincher: And, then, also, in connection with testimony at record 828, we would like the books and records and documents of the company, in this case of The Clorox Company, which show that the money spent in the Erie, Pennsylvania promotional situation came out of money which would have been used in other media of advertising.

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(Tr. p. 3288)

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Hearing Examiner Haycraft: Well, as I understand that testimony, in other words you had a certain amount of money to spend for advertising, and he's spending it that way in that area at that time.

Now, how in the world he can amplify on that would simply be the amount of money that was spent there and from what fund it was taken.

Can you show that?

The Witness: I perhaps can help in this.

(Tr. p. 3289)

A. The Clorox advertising funds are appropriated based upon a set amount per case of Clorox sold, and that is appropriated in the beginning of the year. There is no increase in appropriation incurred in a year because of what you do in Erie or any other city. It has to come out of those funds; those funds would be spent in some other manner if they weren't spent in that way, in Erie, or wherever the other town was you mentioned.

We can demonstrate that in some way—I don't know, but that is a fact.

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(Tr. p. 3291)

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The Witness: I think the only way we could sustain that statement, which is correct, is to show that there was no additional money appropriated for Clorox advertising and promotion activities during the period in question.

Mr. Royall: As I understand it, your Honor, in the testimony given before and the testimony that's been given here, they don't have to go and get their money out of any particular pocket. They just have so much money to spend; and if they spend it on this, they don't have it to spend somewhere else. It doesn't have to be identified where it came from.

Hearing Examiner Haycraft: I think that's probably true; but we had better have the man who has control of that testify to those facts.

Mr. Royall: I suppose that would be someone from Clorox?

The Witness: That's in my control, the amount of money that is spent; and the way that's arrived at is in my control as president of the Clorox Company and as presi-

dent of Procter & Gamble Company; and I don't know anyone better qualified to testify than me on how much money I know was spent.

(Tr. p. 3292)

Hearing Examiner Haycraft: In other words, it would be possible to do this then: Had you been selling in Evansville and Erie prior to the time you put on this?

The Witness: Oh, yes.

Hearing Examiner Haycraft: Now, do you know how much money was spent there normally?

The Witness: No, I don't; and I am not saying that we didn't spend more money in Erie than we spent previously in Erie, as I say, a test operation or to meet a specific situation. I am saying that the additional money that we spent in Erie—if it was additional money—came out of some place else because there was no additional advertising and promotion funds appropriated for the Clorox brand.

Hearing Examiner Haycraft: But you are in no position to say where it came from?

The Witness: Well, it could have come from little bits and pieces all over, I don't know. If there is no more money to be spent and if that's the amount that is going to be spent anyway, then you know it must have come from some place.

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(Tr. p. 3293)

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By Mr. Tincher:

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Q. In establishing that budget, it is not just so much a case but that estimate is broken down to what will go to what media, is that right? A. No. That budget is

appropriated in, you might say, a lump sum. The money is appropriated in that way, and then we agree—Mr. Fred Brown, the head of Clorox Company, and myself—

(Tr. p. 3294)

agree on the policies under which that is to be spent. Those policies, as I said, are to follow the same pattern of the old Clorox company, apart from experimental endeavors in particular towns.

Q. When you and Mr. Brown first got together and you decided how much money was going to be available, you had to make some effort to break that down into what media would be utilized, did you not? A. We took a look at what the Clorox Company spent per case, and we took that same per-case figure and estimated shipments that we would make of Clorox in this period which the budget covered; and that's how you got at the total.

Q. Right.

Now, we have got our total. A. Yes.

You get the total and then somebody, Mr. Brown and his advertising manager, breaks that down as to how much for magazines, how much for newspapers, how much for radio, how much for television, how much for plans such as the one used in Erie, and so on; but he cannot exceed that total amount of money.

Q. And it is all broken down by categories, it would have to be before he starts spending the money? A. That breakdown can change. It is within his prerogative so long as he lives within a policy for spending it; but obviously when you add something in Erie and it's within a fixed total, it must come from some place else because it's

(Tr. p. 3295)

within that fixed amount of money. That's the meaning of my previous testimony on this subject.

Now, there is no records we have that would say that the money we spent in Erie, Pennsylvania—We did not spend any more money because of what we did in Erie.

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(Tr. p. 3313)

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Q. Do you have some documents, sir, in documentary form concerning the price on quart bottles of Clorox? A. I don't have any documents on the prices, no.

Hearing Examiner Haycraft: Can you answer the question you were asked this morning?

The Witness: I can.

The question this morning was, had we made any changes in the Clorox prices since last November?

Q. That's right. A. We have made changes only in two points, Atlanta and Buffalo, and in those points we have increased the price of the Clorox quart bottles simultaneously with the introduction of a special quart bottle with a handle.

We have on July 1 discontinued the price increase; or in other words, we have reduced it again to its original price in Atlanta. A ten-cent higher price per case on the quart bottle still stands in Buffalo.

Q. And that ten cents, sir, would make the price $2.01 rather than $1.91, or do you know that?

(Tr. p. 3314)

A. I do not know that, no.

Mr. Royall: We will stipulate it does.

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(Tr. p. 3318)

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Mr. Royall: Mr. Tincher, Mr. Morgens was asked about

the statements on Exhibit 331, to the effect that approximately

(Tr. p. 3319)

two-thirds of the total business of the company was represented by soaps, detergents, cleansers.

Hearing Examiner Haycraft: And drugs.

Mr. Royall: And their by-products; and by the sales of drug products. Your question was directed as to how much the percentage would be as to soaps, detergents and cleansers.

Hearing Examiner Haycraft: That's right.

Mr. Royall: We have written a notation, consisting of the second and third lines of our copy of Exhibit 331, indicating that percentage. The exact figures are available for your inspection at the Company office, so that you could recompute the percentage if you desire to do so.

If this percentage is to be put in evidence, your Honor, these two lines, we would like it done in camera.

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(Tr. p. 3320)

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Hearing Examiner Haycraft: Let him mark that, and I will receive it, and you can borrow it. Let the record show this exhibit refers to Commission's Exhibit 331.

(The paper referred to was marked Commission's Exhibit No. 540, and received in evidence, IN CAMERA.)

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(Tr. p. 3330)

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Hearing Examiner Haycraft: Do you remember, Mr. Morgens, what it was?

The Witness: It was on the question of whether or not the Clorox Company increased its expenditures as a result of what it did in Erie, or whether that expenditure came out of other media or other forms of expenditures.

Hearing Examiner Haycraft: Oh, I recall it.

What have you found out about it?

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(Tr. p. 3331)

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The Witness: There was one appropriation made by the Clorox Company after its acquisition by Procter & Gamble for advertising and promotion expenditures. That appropriation, which if we don't have it here we can get, may have to come from San Francisco and amounted to $3,800,000 for the eleven-month period, August 1 through June 30. That's the fiscal year except for the month of July, which was before the acquisition. There have been no additional advertising or promotion appropriations. We phoned San Francisco and talked to the comptroller. He told us on the phone that that appropriation would be underspent by approximately $50,000. He is confirming that and will wire the confirmation.

We cannot find today the exact figure because the books of the Company are not yet closed. They have a fiscal year ending June 30; they will be closed shortly, and we will file or we will submit the necessary papers to show what that expenditure was.

The purpose of this testimony is to show that a given amount of money is appropriated for a brand, and how the management of the Company uses that advertising and promotion appropriation is within its authority under the policies under which it operates, but that it doesn't just add additional money to the funds behind the brand when

it runs something like a cents-off offer, which was the offer mentioned in connection with Erie.

(Tr. p. 3332)

I think that was the whole point of the testimony, whether or not that represented extra funds or not.

Mr. Tincher:

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(Tr. p. 3334)

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Q. Let me ask you another question along these lines, Mr. Morgens. The advertising allowance is based on so much a case, is that right? A. Cases sold. The appropriation is usually established on the basis of a certain expenditure per case, or per unit, yes.

Hearing Examiner Haycraft: What basis, what time? You couldn't anticipate how many units you would sell during the year? A. You make a—yes, you do. That's part of setting the appropriation. You estimate what you are going to ship and you establish the amount of money you are going to expend based on an estimate of what you are going to ship. That's the way you arrive at that total figure.

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(Tr. p. 3337)

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By Mr. Tincher:

Q. Mr. Morgens, I show you Commission's Exhibit 403, which is in camera, which is entitled Advertising Promotional Expenditures for The Clorox Company for the Period August 1 through December 7, 1957, which would be five months for which the operation covered. Is that correct?

* * * * *

A. Four months and seven days, if I understood you correctly.

By Mr. Tincher:

Q. Oh, four months. A. Yes

Q. And the appropriation was supposed to be for 3.8 million dollars.

(Tr. p. 3338)

A. That was the only amount appropriated.

Q. What was the exact date of that period, sir, that that money was to be spent? A. August 1 through June 30.

* * * * *

Q. Does that amount, sir, include the six cents per case allowance plan? A. I'm quite certain not. I'd like to say I'm certain, but I'm not certain about that accounting out there as I am about it here. It would not within The Procter & Gamble Company, and I'm quite certain it wouldn't on The Clorox Company.

Q. Advertising and promotion. A. Advertising and promotion.

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(Tr. p. 3339)

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Q. Now, is there within the budget that's allocated, sir, an emergency fund in case Purex, or someone like that would come along and have a big promotion in the locality? A. That would be very unusual if it was there. I feel quite certain there is always a one percent or two percent contingency, because sometimes rates change, and, of course, there is usually a contingency fund.

You see, it's the prime responsibility of the manager of that company not to overspend his budget.

Q. All right. Excuse me—go ahead. A. I don't know what the final figures, when the books are closed, will show, but I would say if they overspent the budget they're not the people I think they should be.

Q. Now, after the appropriation is established at the beginning of the fiscal year that is involved, when is there a re-appraisal made, or is there a re-appraisal made to see if the case sales are following the expected pattern? A. That's constantly being made.

(Tr. p. 3340)

Q. So that—— A. Now, if the sales do not come up to the estimated volume that was made at the beginning of the year, your advertising and promotion expenditures are cut back so that the amount per case stays in line. An only exception to that will be if there's a sudden falling off in the last quarter of the year of sales and committments were then already made and could not be cut back, in which case that is formally reported, and they get authority to overspend the case rate because there is no alternative.

Q. All right, sir, and the converse of that would be true, also, would it not, if at the end of the first quarter or the first half the case sales were much higher than anticipated, there would be more money available for advertising and promotion, would there not? A. There would be a receptiveness on the part of the company to receive a recommendation for additional appropriation, providing there was clear case made that that money could be well spent on the brand.

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(Tr. p. 3352)

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Howard Joseph Morgens—Direct

Q. Now, Mr. Morgens, have there been any new production locations for the Clorox bleach since our February meeting, excluding the Kansas City situation?

(Tr. p. 3353)

A. The Kansas City situation, and the Boston situation, which you may be familiar with.

Q. Yes. Excluding both of those, sir. A. No.

Q. And the production has resumed with Boston now. A. The production has resumed with Boston, and Kansas City.

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(Tr. p. 3363)

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Courtroom No. 1, Room 805
United States Post Office and
Courthouse
Cincinnati, Ohio
July 8, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 3364)

PROCEEDINGS

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(Tr. p. 3365)

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Howard Joseph Morgens

resumed the stand and testified further as follows:

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Howard Joseph Morgens—Direct

(Tr. p. 3369)

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The Witness: I was asked to tell the story about whether the ironing board cover was in fact a self-liquidating premium as I think I had previously testified in January.

By Mr. Tincher:

Q. Yes, sir. A. The story is as follows: The ironing board cover premium was run in November, 1957, in the Southeastern United States, between January 20 and February 14 in Erie, Pennsylvania, and in June, 1958, in the southwestern sales division. In each case the ironing board cover cost 38½ cents; postage was 5 cents, the handling charge was 6½ cents in 1958 and 5½ cents in November—in the November, 1957, offer. The total

(Tr. p. 3370-A)

cost to Clorox therefor was 49 cents for the 1957 offer and 50 cents for the 1958 offer. In each case the charge to the consumer for the premiums was 50 cents. In each case the ironing board covers were bought for the specific premium offer and were purchased specifically for the Clorox premium offers. There was no special quantity discount by reason of any Procter & Gamble connection or previous Procter & Gamble use of this premium.

Then I have a further story on what is called a dampening bag which was run as a self-liquidating premium promotion in March, 1958. I don't know whether you want that information or not. I have it here if you do.

Q. No, I'm not interested in it.

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(Tr. p. 3370-B)

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Q. Now, you mentioned the total price of 49 cents and another price. Was that the total cost charged The Clorox Company by Procter & Gamble? Just where did that figure enter in? A. The handling cost was done by The Procter & Gamble advertising departments, the handling of the offer. The mailing was done by The Procter & Gamble advertising department's merchandising division, and Clorox was charged by them for that handling cost.

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(Tr. p. 3371)

Hearing Examiner Haycraft: Now, without any such evidence along that line it's going to be assumed that all of this will be taken into consideration as to what they actually paid. There will be no finding as to whether or not it's the same as outside.

By Mr. Tincher:

Q. Now, sir, you've explained the charge for the mailing. Now, what would be the charge for the actual work of the redemption of the premiums? A. The charge of six and one-half cents was the handling charge, and that covered every aspect of the handling. I said the postage was five cents, in addition to six and one-half cents for the handling.

Q. Then, the handling would include redemptions. A. The handling would include all of the redemptions, yes, The filling of the requests when people sent in their money; they were mailed back the ironing board cover.

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(Tr. p. 3372)

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Mr. Royall: Mr. Morgens, you were asked at Page 3248 about certain distributor changes of Clorox before and

after the merger, or maybe after the merger—before and after the merger.

Have you information as to the changes and when they were made and the personnel involved, and who the personnel involved was?

The Witness: Yes, I have.

Mr. Royall: If you wish to examine him about that information.

By Mr. Tincher:

Q. Yes. A. You asked about—

Hearing Examiner Haycraft: Kansas city, to start with.

A. (Continued) About three different distributors who have ceased to work for Clorox. One was in Kansas City, and in October, 1956 the Clorox Chemical Co., that was the old Clorox Chemical Co., replaced McManus Huryer in Kansas City, and that distributor also covered Wichita and Oklahoma City. That firm

(Tr. p. 3373)

was replaced by another distributor called H. J. Zorning for Oklahoma City, Kersting Greer for Kansas City, and Whitney-Niles-Allen for Wichita. That was in October, 1956.

Another distributor that you requested information about was in Milwaukee, Wisconsin. In August, 1957 Wetzler, Voss was appointed Clorox distributor replacing Wilkenson Deskey Randall. This change had been initiated by the Clorox Chemical Co. and was completed after the acquisition in August, 1957.

The third distributor that you asked——

Q. Go ahead, sir. A. The third distributor about which you requested information was in Cedar Rapids,

Iowa. In March, 1957 Berg Brokerage of Davenport replaced Carton Jeffery in Cedar Rapids.

That's the whole story.

Hearing Examiner Haycraft: Do I understand from what you have said, there have been no changes in distributorships since Procter & Gamble took over control?

The Witness: The only change was in Milwaukee, and that change was initiated by the old Clorox Chemical Co., but completed——

Hearing Examiner Haycraft: That's what I understood. There have been none initiated, then, by The Procter & Gamble Company. Is that right?

The Witness: Yes.

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(Tr. p. 3377)

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By Mr. Tincher:

Q. My question is, sir, the same question I asked yesterday, if various prices off have been offered in these cities. That was the extent of my question.

Hearing Examiner Haycraft: What cities?

Mr. Tincher: Detroit, Nashville, Chattanooga, Atlanta and San Francisco, and subsequently we asked if any

(Tr. p. 3378)

other promotions were used.

Hearing Examiner Haycraft: What product?

Mr. Tincher: Clorox, sir.

Hearing Examiner Haycraft: All right.

Mr. Royall: Your Honor, the question finally was anywhere.

Hearing Examiner Haycraft: Yes.

* * * * *

A. I understood the question a little differently, your Honor. I thought the cities you mentioned were already in the record, and you wanted to know whether there were any other cities, any cities other than that, other than those which were already in the record where we had run some——

Hearing Examiner Haycraft: That was my understanding of it, too, but go ahead.

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(Tr. p. 3379)

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A. (Continued) The Clorox promotions which were run since February, 1958 and which are not included in the evidence are as follows:

Price off label promotions, there was a five cents off on gallons used in the distributor territory covering Metropolitan Chicago and the areas immediately around Chicago, that's northern Illinois and part of Wisconsin.

There was——

By Mr. Tincher:

Q. Before you leave, sir, can you give us the approximate date on each of these, or do you have that? A. I don't have that information. It's been since February, 1958.

Q. All right, sir. A. There was a premium pack of a dish cloth attached to the Clorox bottle in Los Angeles.

There was a self-liquidating premium offer, ironing board cover offered in ten distributor territories in the southwestern United States.

(Tr. p. 3380)

Q. Southwestern. That would include Texas, Oklahoma. A. Yes, sir.

Q. Maybe Arizona, and New Mexico? A. Possibly, Mr. Tincher.

Mr. Royall: Is that all you care to ask on that subject?

By Mr. Tincher:

Q. Does that complete your answer, sir? A. Yes, sir.

Q. Now, apparently there has been some misunderstanding, sir. We still would like to know about Detroit, Nashville, Chattanooga, Atlanta and San Francisco price off labels on all three sizes with the exception of Detroit where our question is the five cents off on half gallons. As a matter of fact, sir, we will withdraw that question because we put in such label when we were in Detroit, it was stipulated in, so we will withdraw the City of Detroit.

* * * * *

(Tr. p. 3381)

Mr. Royall: We offer to stipulate as to the towns mentioned except Atlanta, as to which we have no information here. We would be glad to send to counsel for the complaint for the purposes of a stipulation any information we find about Atlanta up to this present time, if we find any. And that might be entered in the record, if they wish it be done.

Mr. Tincher: And I assume we can stipulate that in these various cities, with the exception of Atlanta, that there was a two-, four- and six-cent off label, or something comparable to that?

Mr. Royall: I think so.

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(Tr. p. 3388)

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Mr. Tincher: Do you want me to read this in the record?

Hearing Examiner Haycraft: Yes, read it to Mr. Morgens and see if he can confirm it.

By Mr. Tincher:

Q. Starting at Record 1462, line 9: "Now, Mr. Shaver, what has been the savings reported to The Clorox Company on radio advertising by virtue of discounts and Procter & Gamble product grouping?"

And Mr. Royall has a statement concerning that they were computations which had been made after Mr. Morgens' examination, Mr. Morgens didn't have full information, et cetera; he says he didn't know whether Mr. Shaver knows anything about it; if he did, we would prefer to give supporting data.

And the Examiner says, "He wants to find out if he made any."

"Mr. Royall: I don't think he has . . ."

"The Witness: May I answer the question?"

The Examiner says, yes, you may. The objection is overruled.

The Witness says, no.

"Q. You haven't made any? "A. We have not made any.

(Tr. p. 3389)

"Q. What has been reported to you by The Procter & Gamble Company?

Objection.

Overruled.

Further objection.

"Examiner: What have they reported to you, Mr. Shaver?

"The Witness: A saving of about $500 in radio, around $50,000 in magazines, $86,000 in television."

Then Mr. Tincher: "Q. You have had a saving in radio even though you are doing much less radio advertising than you were prior to the acquisition?

"Examiner: $500 he said."

Hearing Examiner Haycraft: All right, let the witness answer.

Mr. Tincher: And in an earlier place—that took care of three of them. In an earlier place——

Hearing Examiner Haycraft: I remember the $50,000.

Mr. Tincher: In an earlier place there was a statement of the witness about $2,000 saving in newspapers on expenditure of $1.4 million.

Hearing Examiner Haycraft: Now, the point is, as I understand it, you want Mr. Morgens to look and see if he can find where he made such a report to Mr. Shaver, and what it was based on.

(Tr. p. 3390)

The Witness: Could I attempt to clear this up off the record?

Mr. Royall: No, put it on the record, if you can.

Mr. Tincher: Yes.

By Mr. Tincher:

Q. Of course, the $64,000.00 question is whether these figures I read you, were they actual or were they some kind of theoretical figures? A. Mr. Tincher, the only way that I know of that you can answer your question is by means of a computation. You can see the books, you can see any other figures that you wish to get, and I don't believe you or any qualified expert can answer the ques-

tion except by means of a computation. And the word computation is in the testimony which you read. It's a calculation.

I am sure we can show you that calculation and let you go through it and talk to the people who made it, and I would think that you would be very much satisfied that that was the best way known to man to answer your question; by means of a calculation I mean this:

One would have to take the plans as of a given date for the fiscal year period as to what was being spent in television on specific buys, specific times of the day on specific days, and then would—then one would have to calculate, if I were attempting to answer this question, one would have to

(Tr. p. 3391)

calculate what those specific purchases would have cost The Clorox Company if it were on its own, and that, of course, would be done by following the card rate calculation for each specific station across the country on all of these specific spots that are purchased.

Then one would make another calculation alongside of that saying those spots cost Procter & Gamble, Clorox is part of that, and making a comparison, and you would arrive at the difference of $86,000.

My understanding is that calculation was made and was made painstakingly, and that's where the $86,000 figure came from.

But you could subpoena the books and records, and I don't think you could get any kind of answer to your question.

Q. Well, it would be very simple, would it not, to know where Clorox advertised, what station, what newspaper?
A. The advertising lists of spots they are buying, they're

changing, there are no constants. You will find a given list of spots one month, and you will find a different list of spots another month. There are degrees of change, of course. But there is no constant between one fiscal year and another. The station changes its format and doesn't make a spot available any more for national advertisers. You have to find another one. A competing program comes in opposite that spot with a very high rating, so you move it. You change.

(Tr. p. 3392)

It ceases to be available as a one minute, and becomes a twenty second.

And there is a constant kaleidoscope, of changes in that picture. The only way that we knew how to get an honest answer to your question, or the best answer we could think of was to make—here's the plan as of this moment, this is what it cost The Clorox Company to buy it, if it were buying itself, and this is on the rate cards. Anyone can do this. And here is whatever cost Procter & Gamble paid. You apply the standard published rate cards for each station, for each time of day, for each spot.

Q. Right, sir.

Mr. Royall: Mr. Tincher, may I ask you a question? I'm merely suggesting to you that which would save cross-examination on my part and give the whole picture.

I don't think you have clearly brought out whether these figures were for the fiscal year which had not yet ended at the time they gave, and they had to be based on estimates. I think if you ask him for that period he's covering, I think it appears in the evidence, but I'm not sure, it would complete the story.

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Howard Joseph Morgens—Direct

(Tr. p. 3393)

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By Mr. Tincher:

Q. All right, sir, these estimates of savings listed, for example the $86,000 on television; is that assuming an equal amount spent by The Clorox Company as would have been spent by the Clorox Chemical Co.? Just how is that computed? Is that—That is $86,000 savings on what? A. That is assuming what The Clorox Company planned to spend after Procter & Gamble acquired it. Actually we spent more than the old Clorox Chemical Co. on television spots, a small amount more but it was probably on a larger amount.

Q. That's what I want to know. You spent a small amount more than the old company did. A. No, we spent a larger amount on television spots.

Q. Yes, a larger amount, but only a smaller—not an extremely larger—I see the problem.

You say it's a larger amount, but the increase is small. Is that correct? A. Well, I would interpret it as small. I could give you the figures here.

Q. How small, sir?

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(Tr. p. 3394)

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The Witness: As a matter of fact, I don't have the figures. I have them on the basis of an 11-month period, but then the calculation wouldn't make any sense at all. They would have to be based on a 12-month period.

By Mr. Tincher:

Q. Can you give a percentage, sir? Would it be 10%, or 5%? A. I would give you the figures I have, and you can help me draw any conclusions you wish from it.

The old Clorox Chemical Co. spent in 1956-'57 fiscal year, twelve months, $1,150,000 on television spots; The Clorox Company spent in August through June, 1957-58, that's eleven months, so you would have to make an extension here $1,386,000. Now, I understand that the Clorox Chemical Co. had built up in the course of '56-'57 its television expenditures so that its rate at the end of the fiscal year was higher than its rate at the beginning of the fiscal year. And what we have done is by and large extended the rate of television spending at the end of the year.

Now, the calculation that I am talking about was based on what The Clorox Company was doing after August 1, and what it—what that—what those television spots would cost The Clorox Company if they were continued for a 12-month period

(Tr. p. 3395)

which they are never done because there are always variations in a picture like that. But it's making that projection, it's assuming everyone is continuing for twelve months, what would that cost The Clorox Company?

And then there was another calculation based on the same assumption, assuming those particular spots would continue for twelve months what would they have cost The Clorox Company if it had been operating as an independent company, not related to Procter & Gamble.

I don't——

Q. Did you make the same 12-month projections for The Procter & Gamble advertising that was involved? A. I'm not sure I understand your question.

Hearing Examiner Haycraft: The same 12-month period. A. (Continued) Yes, the identical period, identical spots.

Howard Joseph Morgens—Direct

By Mr. Tincher

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(Tr. p. 3397)

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Q. All right, sir. Now, let's turn to newspaper, and let me ask you the same question there. If The Clorox Company has spent more money on newspaper than the Clorox Chemical Co.? A. The answer to that is no.

Q. There has been less money spent? A. Well, there has not been a full twelve months go by either.

Q. That's what I'm assuming. Break it down on a monthly average. A. It's been fairly close, Mr. Tincher. The exact figures on newspapers——

Mr. Royall: Your Honor, we object to this. They're trying to compare eleven months with twelve months, and I think——

Hearing Examiner Haycraft: I think it can be done by projection on an average basis.

(Tr. p. 3398)

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A. (Continued) Newspaper expenditures in '56-'57, as I have them here—these are pencilled figures—$1,750,000, 1956-57 fiscal year; $1,400,000 in the 11-months, August through June of the '57-'58 fiscal year.

Mr. Tincher: Could I have that answer, sir? I got confused. I'm very sorry.

(Answer read.)

By Mr. Tincher:

Q. So for the newspapers there were approximately $300,000 less spent in the 11-month period than the preceding 12-month period by the Clorox Chemical Co. Is that correct? A. The figures would show.

Howard Joseph Morgens—Direct

(Tr. p. 3399)

Q. Now, within that 11-month period were there any definite policy changes in the amount of newspaper advertising that would be used during any given period within that 11-month period? A. No, sir, there would not.

Q. All right, sir. A. That might—That again would be a continuation of taking an average of your expenditures. As I say, the old Clorox Chemical Co. in the course of '56-'57 was building up its television, so at the end of the year it had a higher rate than when it started, and they must have been lowering something while they were doing that.

Q. There have been no policy changes at all. A. No.

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(Tr. p. 3400)

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Q. Mr. Morgens, is it correct that on the $1.4 million newspaper expenditure of Clorox advertising in the eleven months subsequent to the acquisition, that it was only possible to save $2,000.00 above and beyond what the Clorox Chemical Co. did of about $1.4 million newspaper advertising before? A. That's my understanding of the testimony, and I certainly have no reason to doubt it.

Q. Now, was that $2,000 all in one newspaper, sir, or was that divided among 600? A. I don't know.

Q. Now, the same question, sir, with respect to radio, as to whether the expenditures for radio pro-rated monthly, or however you want to do it, subsequent to the acquisition, or more or less than the comparable period prior to the acquisition?

Mr. Royall: I object to the pro-rating monthly.

Hearing Examiner Haycraft: Overruled.

By Mr. Tincher:

Q. Or just give it the way it had been, sir.

Mr. Tincher: We are attempting to meet the objection.

Mr. Royall: Well, sir, he's already testified this was an estimate for the month of June at least.

A. My counsel is unhappy, but I'll——

(Tr. p. 3401)

Hearing Examiner Haycraft: Go ahead.

A. (Continued) The 1956-57 figures I have show that $114,000 was spent in radio—I'll give them the way I have them here; in the 10-month period of '57-'58, that's August through May, it's an actual figure, Clorox, I believe spent $105,000,000; estimated for June is $10,000,000—$105,000, and estimated for June is $10,300.

By Mr. Tincher:

Q. All right, sir, thank you.

Well, finally, sir, to make the record complete, the same question with respect to magazine advertising. A. 1956-57, $485,000 magazine advertising; 10 months, August through May, '58, $302,000; estimated in June, $52,000.

Those are the figures.

Q. All right, sir. Now, one final question concerning all media of advertising. Is it my understanding that subsequent to the acquisition the planning, the placing of Clorox advertising has been handled by The Clorox Company advertising officials and their advertising agency Honig-Cooper on the west coast? A. That's correct.

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(Tr. p. 3402)

Hearing Examiner Haycraft: As I understand your testimony, you said you sat in on the budget yourself.

The Witness: I sit in on the total amount of money, a broad policy decision.

Hearing Examiner Haycraft: Whether it would be more or less.

The Witness: I say how much money, and the general philosophy we want to follow.

Hearing Examiner Haycraft: Yes.

The Witness: In spending that money.

Hearing Examiner Haycraft: But they work it out in details.

The Witness: They work it out in details.

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(Tr. p. 3407)

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CROSS-EXAMINATION

By Mr. Royall:

Q. Mr. Morgens, yesterday Counsel for the Complaint was making certain inquiries about Exhibit 403 relating to advertising promotional expenditures of The Clorox Company from August 1st, 1957 through December 31st, 1957. I hand you this Exhibit 403, and ask you whether the item six cent case allowance, $613,403 is included in the advertising and promotional expenses of $33,800,000— A. $3,800,000.

Q. $3,800,000 about which you testified? A. It is not.

Q. It is not. A. No.

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(Tr. p. 3408)

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Q. That's right, sir. All right, sir.

This $3,800,000 figure about which you were asked yesterday was for eleven months, was it not, sir? A. Yes, sir.

(Tr. p. 3409)

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By Mr. Royall:

Q. Now, you were asked some questions yesterday about whether or not the appropriation of $3,800,000 for the eleven months period would be increased or possibly increased in the event of increased sales, and I think your testimony was it would be. Has there been any increase, or was there any increase in that figure during the period from August 1st, 1957 to the end of the fiscal year?

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(Tr. p. 3410)

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A. There was no increase in the advertising and promotion appropriation during the course of the fiscal year—during the course of the eleven months of the fiscal year.

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(Tr. p. 3418)

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Edwin A. Snow

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you give me your full name, Mr. Snow?

The Witness: Yes. Edwin A. Snow.

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DIRECT EXAMINATION

By Mr. Tincher:

Q. Hello, Mr. Snow. Would you tell us, sir, what your

(Tr. p. 3419)

occupation is? A. I am the advertising manager of The Procter & Gamble Company.

Q. Are you a corporate officer? A. No.

Q. And how long have you been with the company, sir? A. I joined the company in 1933.

Q. And what line of work have you been in with the company generally speaking? A. Well, since that date I've had varying degrees of responsibility for the advertising and promotion of individual brands——

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A. (Continued) I will repeat what I said. I joined the company in 1933, and since that time I've had varying degrees of responsibility for advertising and promotion of individual brands and groups of brands. In 1954 I was made manager of the brand promotion division having responsibility for soap and synthetic products. Last fall, October, 1957, I became the advertising manager of the company.

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(Tr. p. 3420)

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Q. All right, sir. Now the great majority of Procter & Gamble advertising is spent on household brand name products as distinguished from bulk items or items sold to industrial concerns, is it not? A. That is correct.

Q. Now just what exactly are your duties in your present capacity? I realize you told us your dual function

more or less, but specifically what do you do in these functions? A. Well; they are many. In connection with the soap division where I am the advertising manager I have the basic responsibility, subject to approval by general management in many cases, for the advertising and promotion of the soap division brands.

Acting in my staff capacity with the other independent advertising departments, including the soap department, I have functions which have to do with coordination and avoiding

(Tr. p. 3421)

of conflict and confusion between the various advertised brands in the different product divisions.

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Q. And part of that coordination, Mr. Snow, would be to attempt to plan the advertising of the brands under your supervision so that they can be utilized to earn the maximum possible discounts in advertising, would it not? A. The answer to that is that I do no planning whatsoever with relation to the discounts to be earned by the individual brands. The fact is that each independent brand has its own organization and, working with its advertising agency, recommends the kind of advertising and promotion which it thinks best in its own interests.

In the purchase of media, for example, there are many different requirements depending on the brand and its markets, and I'm confident that those recommendations are made with very little if any reference to discounts.

Q. There is no effort on the part of the company in expending the total amount that's spent for advertising to secure discounts? A. The answer to that is that when the independent proposals of the various brands are

approved, the various requirements for media such as television and magazines are assembled and,

(Tr. p. 3422)

of course, we take advantage of the discounts which are available to us on published rate cards which are determined by the individual media.

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A. Would you repeat that question, sir?

By Mr. Tincher:

Q. Yes. It may not be verbatim. It will be approximately the same. Now, in securing discounts it isn't just an accident or a haphazard business of each brand running all its own ads, then after it's all over, the advertising has been run, you see if you get a discount? As contrasted to that isn't it a matter of taking what each brand's going to spend and bringing it together at some central point and projecting it to the future and trying to see if you can get discounts?

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(Tr. p. 3423)

A. There is very little of that done to my knowledge.

Hearing Examiner Haycraft: Of what done? Let's get it straight. Very little of what done?

The Witness: As I said earlier, the individual brands recommend the advertising media they think they should use in their own interest, and a variety of factors enter into those decisions. When the various brand proposals are made, they are made without reference to any discounts to my knowledge. They are made in the interests of the individual brands. Now, of course, when the expenditures are basically approved and ways of spending are approved, the advantages of the discounts are cal-

culated, depending on which brands may use certain magazines, which brands may use certain television networks, and the costs are made known to the individual brands. We, however, as a principal rule buy the media which will reach the most consumers and in the way that the brands want to reach them, and discounts play a very small part in those decisions.

By Mr. Tincher:

Q. Of course, with most of your products, your soaps and detergents and cooking products, food products, things of that nature, media that will reach the audience you're aiming at is primarily women's magazines, is it not? A. No, that is not right. There are a number of media available to our household products such as television, radio, magazines, Sunday supplements.

(Tr. p. 3424)

Q. Wait a minute. I probably confused you. Within the magazine field, the type of magazine that will be used by Crisco and will be used by Tide, by Ivory soap and by Clorox bleach are generally speaking women's magazines rather than just clear across the strata of all magazines, are they not? A. That is correct.

Q. Now the same thing is true in selecting radio or television. The time period involved will be approximately the same to catch the housewife while she is home; isn't that correct? A. I can't answer a question as broad as that because in the purchase of television we purchase both nighttime and daytime television. We are interested in reaching housewives, but on many of our products we have an interest in the children and the men as well, a dual audience.

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Edwin A. Snow—Direct

(Tr. p. 3439)

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Q. Mr. Snow, will you tell us just how the advertising agencies enter into the advertising of The Procter & Gamble Company, at what point they come in and what they do, what coordination or liaison there is between the company and the advertising agencies? A. Each of our advertised brands employs an advertising agency.

Hearing Examiner Haycraft: Different agencies are they?

The Witness: We are now working with ten different

(Tr. p. 3440)

agencies.

Hearing Examiner Haycraft: All right, go ahead.

The Witness: But each brand works with an advertising agency. Each brand has its own advertising organization. The advertising group within the agency responsible for the brand and the same in our advertising departments work very closely together and collaborate in developing and implementing what they regard as the best advertising and promotion program on that individual brand. It is frequently very hard to distinguish, for example, the relative contributions of our people and the advertising agency toward any specific proposal. Does that cover your question, sir?

By Mr. Tincher:

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Q. Mr. Snow, does The Procter & Gamble Company advertise extensively in trade journals as contrasted to magazines reaching the consuming public? A. I do not know the exact figures on that, but I can tell you that our advertising in consumer publications is relatively—considerably heavier than in trade publications.

Q. Now let me ask you the same question, sir, with respect to farm magazine editions as compared with general consumer

(Tr. p. 3441)

magazines.

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A. Again I do not have the exact figures in mind and I know that the situation changes from time to time, but in general we do not advertise as heavily in farm magazines as we do in general consumer publications.

By Mr. Tincher:

Q. All right, sir. Now are the magazines used by Procter & Gamble nationally circulated magazines as contrasted to local or regional magazines? A. I don't think there can be a general answer to that question because I am aware, for example, that some of our brands from time to time have used the magazine "Sunset" which has most of its circulation on the Pacific Coast, but in general the magazines we use have national circulation.

Q. And would that answer, sir, include Ladies' Home Journal? A. Yes indeed.

Q. Good Housekeeping? A. (Nods head.)

Q. Let me read off several: Better Homes & Gardens, Parents, magazines of that nature, are they all nationally circulated? A. All of those magazines are circulated nationally.

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(Tr. p. 3442)

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Q. Now, sir, can you tell us the approximate percentage of Procter & Gamble advertising that is on spot television? A. I cannot.

Q. The same for television programs.

Hearing Examiner Haycraft: You mean their total?
Mr. Tincher: Yes, sir.

A. I cannot, but I would like to explain a little why. I am not familiar with the advertising of the toilet goods brands, the food brands and brands outside of the soap division and the degree to which they spend their money for different media is something of which I have really no knowledge.

Q. Well, let's talk about where you do have some knowledge,

(Tr. p. 3443)

sir, if we may, and within that area the same question: the per cent of money that is spent on spot T. V. A. I don't know the answer to that, but I can say that the amount fluctuates very widely from time to time depending on the needs of the individual brands and particularly in connection with the introduction of new products, so there's no constant percentage that I'm aware of.

Q. Would that mean that there would be no constant percentage on any other media? A. That is correct.

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(Tr. p. 3454)

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Q. Mr. Snow, does Procter & Gamble receive the maximum discount rate on NBC television? A. My understanding is that we do receive currently the maximum discount on the NBC television network.

Q. Now, the same question, sir, with respect to the CBS television network? A. The same answer, yes.

Q. The same question with respect to the ABC television network? A. The answer is no.

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Edwin A. Snow—Direct

(Tr. p. 3456)

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Q. Let me ask you, sir, if the programs which used to be known on radio as the soap box operas, let me ask you if those programs have been transferred from radio to television in recent years by the Procter & Gamble Company? A. None of those programs in their radio form have been transferred to television. However, the titles of several of the programs are now being produced as daytime television programs.

Q. All right, sir, so am I correct in saying that in recent years Procter & Gamble has switched from radio to television on its programs, not spots, on programs? A. That is correct.

Q. Am I correct in saying that with reference to spots, The Procter & Gamble Company in recent years has switched from radio to television? A. That is correct. May I add, in large part. We may be continuing and I believe we are continuing to use radio spots in certain markets on certain brands, for particular reasons

(Tr. p. 3457)

applying to those brands.

Q. Yes, sir. Let me ask you, then, generally speaking, if The Procter & Gamble Company doesn't recognize television spots as being more valuable to the brand being advertised than radio spots?

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A. In general, and I think this is perhaps confidential information, but it is purely my own opinion. In general, I believe that television spots are, today, more productive than radio spots, because the listening to radio has de-

clined very importantly, as there have been increases in the viewing of television.

By Mr. Tincher:

Q. And is there an advantage in the TV spot taking, for example, the product, Comet Cleanser, in being able to tell the housewife about it and at the same time pictorially demonstrate that the bleach——

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(Tr. p. 3458)

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A. In my opinion, the opportunity of illustrating and reaching the consumer via her eyesight as well as through her ear makes a television commercial more effective than a radio commercial on Comet.

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Q. Turning away from network television, sir, and turning to spot television by local television stations, do those stations have discount structures on spot television?
A. My understanding is that a great number of television stations do have discount structures for the purchase of spot time on those stations.

Q. All right, sir. Now, considering television and radio as a whole, and if you can please segregate the answers, is there any advantage to an advertiser advertising over a station that affiliated with one of the national networks as contrasted to advertising over a local, independent, station that has no affiliations?

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A. My answer is not necessarily. It depends, if I may for a moment say, that the value of a spot depends in great part, large

(Tr. p. 3459)

part, predominantly on the number of people who see it and that depends on the network program in general, or program, whether it be network or not, to which the spot is contiguous; and it could readily be that a program on a non-network station, with a high listening audience, could be a more valuable spot than a spot contiguous to a low-rated network program.

Q. All right, sir, let me ask you, generally speaking, though, do not the high-rated network programs have far greater audience in a community with a local station than any program the local station would have on at the same time?

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A. Generally speaking, I would think that is true.

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(Tr. p. 3461)

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Q. Mr. Snow, where we have a situation where a Procter & Gamble program is sponsored by several Procter & Gamble brands, who makes the determination of which brands will sponsor that program and how the advertising time on that program would be allotted among the brands? A. I would like to answer that by saying that each individual program, each individual brand, is in the market for certain television advertising, certain day parts, night time, day time, depending on the media structure it regards as best for itself. These needs are made known as the individual brand budgets are approved or subsequently revised, and our media section is responsible for the coordination of those media interests or requests. A suggested plan of co-sponsorship is developed by our

media section, which must be approved by the individual brands and must be acceptable to them before it is adopted.

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(Tr. p. 3462)

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Q. Mr. Snow, you have just mentioned how this problem, how the solution would be worked out by the media section. Now, this media section has available to it the various discount structures and rates of the media involved, *does it?* A. Yes.

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(Tr. p. 3464)

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CROSS-EXAMINATION

By Mr. Royall:

Q. Mr. Snow, in connection with your various answers with reference to television and radio programs, did you intend to include Clorox as being connected with those programs? A. No.

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(Tr. p. 3465)

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Q. Do I understand correctly that the media section that you referred to recommends to the brands the media or how does it work? A. The media section—I will tell you my understanding of how it works. The advertising agencies and the brand groups at the time of working out the media structures, which seem best for that brand so as to get maximum coverage of the audience they want and a desirable frequency, ask the advice of our media section in preparing their appropriation proposals, and

in revising their budgets as market changes occur throughout the year. The brand organizations and agencies on each individual brand recommend the television, magazine, newspaper supplement, or whatever media structure seems best for that brand. That is done independently by individual brands and product divisions.

Hearing Examiner Haycraft: Recommends to whom?

The Witness: Recommends to the advertising manager of the particular advertising department involved, Mr. Haycraft.

A. (Continuing) Subject to his approval, the individual media recommendations are made known to the media section and, of course, the advertising agency involved which recommended the media structure, in the first place.

It could be that the television required, such as in one

(Tr. p. 3466)

day part, a daytime program, another day part, a nighttime program, in the interest of coverage of the market, would be made known to our media section, and in many cases the programs owned by Procter & Gamble and the various brands would suit the media requirement requested. In other cases, the individual brand would go out and independently purchase the television program, which suited its media requirements.

In many cases, our brands co-sponsor with other of our own brands. In other cases, they co-sponsor with manufacturers of other products. But the programs are purchased to fit the media requirements of the individual brand.

Mr. Royall: Thank-you. That is all.

Hearing Examiner Haycraft: But you raise a point there. I thought I understood it. Maybe I do and maybe I don't. I understood you to say that the media section,

one of its functions, was to coordinate the requirements of the various brands in their departments, and so that they would be sort of a clearing house. So that when they would make their contacts with the advertising agencies and then with the networks and all that, that they wouldn't be getting in each other's way, or asking for the same thing.

The Witness: That is one of the principal functions that they serve. They coordinate the requests of the individual brands. I meant to say that in some instances

(Tr. p. 3467)

the requirements of the individual brands can be fitted into the over-all program structure that Procter & Gamble has. In other words, a determination might be made that the daytime network program requirement of a brand, such as Joy, could be fitted into a program structure with another brand, such as Ivory soap.

In other cases, if that were impossible, the brand, Joy, would independently have to find the kind of television program that it felt was best in its own interest, and that might wind up co-sponsoring with the manufacturer of a tobacco company, or any other of a number of products.

* * * * *

REDIRECT EXAMINATION

By Mr. Tincher:

Q. I have one question, sir. You testified several times, at least here on cross-examination, that the brand determines what its media requirements are before going to see the media people, and their thoughts. Is that correct?

A. Not entirely correct, because I think I said earlier that the individual brands and agencies call on the media sec-

tion for advice and counsel as to what its media structure should be. A number of factors are considered in addition to the

(Tr. p. 3468)

counsel of our media section, as to what the media structure should be.

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(Tr. p. 3474)

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Mr. Royall: Your Honor, we have obtained, at the request of counsel for the complaint, the dates for promotions to which they referred in Chicago and in Los Angeles, in 1958.

Hearing Examiner Haycraft: For Clorox, you mean?

Mr. Royall: Clorox, yes.

* * * * *

Mr. Tincher: I have seen the information, sir, and I am prepared to stipulate it.

Mr. Royall: It is stipulated they both occurred in June, 1958.

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(Tr. p. 3475)

* * * * *

Norman D. Smith

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Deveny:

Q. Will you state your name, please sir? A. Norman D. Smith.

Q. And where are you employed, Mr. Smith? A. Federal Trade Commission, Washington, D. C.

Q. In what capacity are you employed at the Federal Trade Commission? A. I am a business economist.

* * * * *

(Tr. p. 3494)

By Mr. Deveny:

Q. One further thing, Mr. Smith, on the I.B.M. tabulations of the newspaper advertising with The Clorox Company, was there an indication in the volumes of the contracts that you used as your source of material as to the use of color in the advertisements?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Sustained.

Mr. Deveny: Can we explain why we would like to

(Tr. p. 3495)

offer this showing the color advertisements?

Hearing Examiner Haycraft: It would be hearsay. As a matter of fact, I don't think it is sufficiently relevant to make any difference.

Mr. Deveny: Your Honor——

Hearing Examiner Haycraft: It's a difference of opinion as to whether color in newspaper ads—I don't believe there is sufficient relevancy to warrant going into that.

If you really want to prove that you'd better call somebody who placed the ad at that time. It's just a little too distant, too remote.

Mr. Deveny: We're not trying to prove the quality of color; we're just trying to prove the use by Clorox.

Hearing Examiner Haycraft: I know, but we can't even prove it by that. These documents aren't conclusive evidence that they used color.

Mr. Deveny: Well, they aren't even conclusive they used any number of lines, on that basis, your Honor.

Well, your Honor, I think we would like to proffer the answer to that.

Hearing Examiner Haycraft: All right.

* * * * *

(Tr. p. 3496)

Mr. Deveny: May I have your notes, Mr. Smith, on that?

If allowed to proceed with this line of questioning, we would believe, and expect that the witness would testify that for the period January 1 through March 20th, 1957 the Clorox Chemical Co. newspaper contracts tabulated by the I.B.M. Section of the Federal Trade Commission would show thirty-one newspapers with a total of forty-one insertions, and a total of 39,010 lines were in color, and for the period January 1 through March 20th, 1958 the tabulation would show that in thirty-six newspapers, the total of fifty-three insertions, and a total of 51,010 lines the advertisements were in color.

Mr. Royall: We object to that being a proper proffer.

Hearing Examiner Haycraft: The objection is overruled. I'll let the proffer stands. As I said before, I don't think it's relevant or material as to whether there was color or black-and-white.

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(Tr. p. 3521)

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Courtroom No. 1, Room 805
United States Post Office and
Courthouse
Cincinnati, Ohio
July 9, 1958

Norman D. Smith—Direct

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 3577)

* * * * *

Room 332
Federal Trade Commission
Washington, D.C.

Tuesday, 12 August 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 3578)

PROCEEDINGS

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(Tr. p. 3579)

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Norman D. Smith

was recalled as a witness for the Commission and, having been previously duly sworn, testified as follows:

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(Tr. p. 3654)

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Mr. Tincher: Mrs. Reporter, please mark as Commission's Exhibit 572 for identification a one-page typed document entitled "Subpoena dated December 2, 1957, paragraph 13, W. T. Young Foods." You will recall that spe-

cific subpoena, sir, dealt with the advertising and promotional expenditures of various acquired and newly developed products of

(Tr. p. 3655)

the Procter & Gamble Company. This particular exhibit, and there are several more, deals with Big Top Peanut Butter and Big Top Salted Peanuts.

I would also liked marked Commission's Exhibit 573-A through D, stapled together and is described the same as the other document except that it deals with other products, Duncan Hines, Gleem, Crest, Comet and again Big Top Peanut Butter and Big Top Peanuts. And Commission's Exhibit 574 for identification is a similarly described document entitled the "Charmin Paper Products Company," and for each of the products in all three of these exhibits, various dates appear.

* * * * *

Mr. Tincher: Now, it is my understanding, and counsel can correct me if I am wrong, that the authenticity of these documents is stipulated and that the dates appearing beneath the designated product name in each case are the dates for which the indicated amounts of expenditures are applicable.

Mr. Royall: That is correct, your Honor.

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(Tr. p. 3658)

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Mr. Tincher: Mrs. Reporter, please mark as Commission's Exhibit 573-E, it was already through D, sir, that portion of Commission's Exhibit 573-B, which relates solely to Comet. I have torn the page in two and I offer Commission's Exhibit 573-E for identification.

(The document referred to was marked Commission's Exhibit 573-E for identification.)

* * * * *

(The document referred to, heretofore marked for identification Commission's Exhibit 573-E, was received in evidence, in camera.)

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(Tr. p. 3663)

* * * * *

Mr. Tincher: May we mark, sir, as Commission's Exhibit 577 for identification, a one-page typed statement dated July 8, 1958, and this statement, if my understanding is correct, purports to be the expenditure by Procter & Gamble and its affiliates in the United States for spot television

(Tr. p. 3664)

advertising for the fiscal year 1957-58. It was our desire to have for the 12 months of 1957, to be consistent with Commission's Exhibit 447, this information, and I was informed that this would involve a tremendous amount of work and so we are agreeable to accepting this document for the designated period.

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(Tr. p. 3665)

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(The document referred to, heretofore marked for identification Commission's Exhibit 577, was received in evidence, in camera.)

* * * * *

Norman D. Smith

was recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

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Proceedings

(Tr. p. 3699)

* * * * *

Room 332
Federal Trade Commission
Washington, D.C.

Wednesday, 13 August, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 3755)

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Mr. Tincher: Mr. Examiner, at this time I'd like to call your attention to the fact that when Commission's

(Tr. p. 3756)

Exhibit 571 for identification was offered, you commented that you thought it would be a valuable edition to the file here subject to it being established that Nielsen was competent. Of course, that was a contention where the Nielsen situation was in a different picture than it now is. I wonder what your thought on this particular exhibit is now?

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(Tr. p. 3757)

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Mr. Tincher: It concerns exclusively the product, Comet.

Mr. Royall: Your Honor, I have had insufficient time to go into this. I will object, though, if your Honor rules all Nielsen can be accepted.

Hearing Examiner Haycraft: No, I am not ruling it can be accepted, only what you agreed or do not make sufficient objection to perhaps or I feel it might avoid a trip to Chicago to let a particular paper go in. I'd like to see what Mr. Tincher wants out of this book, see what it's based on. I can tell better by looking at it.

Mr. Tincher: We are interested in the market shares and the types of advertising and types of promotion for the product reported.

Hearing Examiner Haycraft: Give me specific pages

(Tr. p. 3758)

or specific documents so I can see what it is.

Mr. Tincher: Tables 4 and 5 are the market shares. We want the entire section entitled "Consumer Sales" commencing on Page 59 and running to 62.

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(Tr. p. 3761)

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Hearing Examiner Haycraft: I am going to allow these figures beginning with Page 59 through 62.

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If you take them out of the book, Page 59 of the section on Consumer Sales will be 571-A; Page 60 will be 571-B through Page 62. Now, I am receiving those in evidence simply for what the sheet shows, that it is a trend. I am not receiving them as a share of the market because there has been no foundation laid to show that. They have some value to show the general trend, the general idea of how these various products are sold. There may be a supplemental stipulation on it as Mr. Royall commented a while ago, perhaps off the record. We may want to use some of these, too. It may be by stipulation, Mr.

Royall, that you can make them what you want them to be, namely, share of the market, but I can't take them as share of the market on the record at this time.

(The documents were marked Commission's Exhibits 571-A, 571-B, 571-C, and 571-D and received in evidence.)

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(Tr. p. 3763)

Mr. Tincher: We offered the special price section also, sir, to show the various promotions that were utilized in selling Comet.

Mr. Royall: Same objection, your Honor, on the same grounds.

Mr. Tincher: I think that is the section just before the red tab.

Hearing Examiner Haycraft. The last section. Do you have the same thing on this for bleaches?

Mr. Tincher: I do not believe so—I will have to correct myself. There are comparable sections.

Hearing Examiner Haycraft: I just don't see where I can make a finding on an exhibit of this kind that would be of any probative value, where this would have any probative value in determining the issues in this case. I think we are getting down a little bit too much into the details on commodities that are not exactly directly in line but in an entirely different market. As I have expressed myself numerous times, evidence of competitive situations or conditions in an entirely different market have no relevancy here. It is true this is a market that is close by. In other words, Comet is found in the store very close to Clorox and other items of that character but they still are an entirely different group of manufacturers and distributors that they have to compete with and you might

have a condition in the abrasive industry for example, an abrasive cleaner, where you see Ajax, Bab-o

(Tr. p. 3764)

and these other items, other companies that are not in the industry at all, where we are going to have to look to see the effect that might make this transaction illegal.

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(Tr. p. 3804)

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Room 532
Federal Trade Commission
Building
Washington, D. C.

Tuesday, August 26, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 3805)

PROCEEDINGS

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(Tr. p. 3832)

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STIPULATION

It is stipulated by the parties that the complainant has offered and, with the exceptions and on the conditions hereinafter set forth, the respondent does not object to, the introduction of the Nielsen figures produced by the respondent and designated as Commission Exhibits 621 (a) to 634 (c), inclusive, showing, as to Toilet Soap, Package Detergents, Abrasive Cleansers, Dentifrices, Shampoos, and Shortening and Lard, the sales in the national "universe" there

shown and the sales of Procter & Gamble products in each of said categories, and showing the market share of Procter & Gamble products in each of said categories.

The conditions under which the respondent agrees to this stipulation are as follows:

(a) The "universe" and market share shown by Nielsen Index in the exhibits covered by this stipulation as to these products is to be conclusive on the complainant.

(b) This data may be offered only in this proceeding and only for the purpose of showing the market share of the various Procter & Gamble products in the designated periods.

(Tr. p. 3833)

(c) Respondent consents hereto in the interest of expedition and without any admission as to the materiality or relevancy of any of the data covered by this stipulation and specifically (but not exclusively) reiterates its objection to the materiality and relevancy of data concerning dentifrices, vegetable shortenings and shampoos.

(d) This stipulation does not commit the respondent to the accuracy or validity of any other part of the Nielsen Index either in this or in any other proceeding except as otherwise agreed of record herein.

In view of the fact that during complainant's case in chief the respondent has voluntarily agreed to this and a prior stipulation relating to certain market shares under the Nielsen Index, the respondent in its defense and the complainant in rebuttal or, where necessary, in cross-examination may introduce without verification or authentication any Nielsen market share figures which the Examiner may deem relevant.

This the 26th day of August, 1958.

WILLIAM R. TINCHER
KENNETH ROYALL
Atty. for Respondent

Mr. Royall: Your Honor, that is satisfactory to the Examiner, is it, sir?

(Tr. p. 3834)

Hearing Examiner Haycraft: Yes.

* * * * * *

Mr. Tincher: In the stipulation now spread of record, sir, it includes by reference, sir, Commission's exhibits for identification 621 through 634, inclusive. We have marked these documents, they all have at least two parts and some four parts; in other words A and B or A to D.

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(Tr. p. 3835)

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Mr. Tincher: And as Commission's Exhibit 622-A and B for identification a document entitled, "Trend Table 4, Toilet Soap, Consumer Sales—By Item—Dollar Basis, At Cost Price to Consumer."

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As Commission's Exhibit 624-A and B for identification, a document entitled, "Trend Table 5, Shortening and Lard, Consumer Sales—By Item, Pound Basis."

As Commission's Exhibit 625-A through E for identification, a document entitled, "Trend Table 4, Packaged Detergents, Consumer Sales—By Item, Dollar Basis, At Normal Cost to Consumer."

As Commission's Exhibit 626-A through D for identification, a document entitled, Trend Table 5, Packaged Detergents, Consumer Sales—By Item, Unit Basis,"

As Commission's Exhibit for identification 627-A and B, a document entitled, "Trend Table 4, Abrasive Cleansers, Consumer Sales—By Item—Dollar Basis, At Cost Price to

(Tr. p. 3836)

Consumer."

As Commission's Exhibit 628-A through D for identification, a document entitled, "Table 3, Bimonthly Shampoo Sales in Drug and Grocery Stores Combined, Cost Price to Consumer—Dollars," that description being on page A, page B being entitled, "Trend Table 5, Shampoos, Consumer Sales by Item, Unit Basis;" C and D having the same description as B.

As Commission's Exhibit for identification 629-A through C, being entitled, "Trend Table 4, Shampoos, Consumer Sales—By Item—Dollar Basis, At Cost Price to Consumer."

Commission's Exhibit 630-A through C, being entitled, "Trend Table 5, Shampoos, Consumer Sales—By Item, Unit Basis." I notice on this particular one, and perhaps several others, sir, it even goes back to 1954, but we have the same comment with reference to the pre-'56 and '57 period.

Commission's Exhibit 631-A through C, entitled, "Trend Table 4, Shampoos, Consumer Sales—By Item—Dollar Basis, At Cost Price to Consumer."

Hearing Examiner Haycraft: What is the product?

Mr. Tincher: Shampoos.

Commission's Exhibit 632-A through D for identification, entitled on page A, "Trend Table 4, Dentifrices, Consumer Sales—By Item—Dollar Basis, at Cost Price to Consumer." The same description on B, C, and D.

(Tr. p. 3837)

As Commission's Exhibit for identification 633-A through D, entitled, "Trend Table 5, Dentifrices, Consumer Sales by Item, Unit Basis."

And as Commission's Exhibit 634-A, B, and C for identification, a document entitled on page A, "Share of Ounce Sales on Dentifrices, Drug Stores"; page B, the same information in Food Stores; page C, same information Drug and Food Stores Combined.

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Mr. Tincher: We offer those Exhibits.

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(Tr. p. 3838)

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Hearing Examiner Haycraft: They will be received in evidence in support of the allegations of the complaint in paragraphs 6 and 13. The objection is overruled.

(The documents referred to, heretofore marked for identification Commission's Exhibits 621-A through D; 622-A and B; 623-A through D; 624-A and B; 625-A through E; 626-A through D; 627-A and B; 628-A through D; 629-A through C; 630-A through C; 631-A through C; 632-A through D; 633-A through D, and 634-A through C, were received in evidence.)

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(Tr. p. 3839)

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Hearing Examiner Haycraft: As I understand it, you have closed your case in chief. What do you have to say, Mr. Royall? The Respondents will begin their defense.

Mr. Royall: We have some motions as I stated to your Honor and perhaps the case should not be finally closed until we have made them and there are a number of them. If I may I would like to proceed on them.

(Tr. p. 3840)

Hearing Examiner Haycraft: Go ahead.

Mr. Royall: Your Honor, we move to strike certain of the complainant's exhibits and in connection therewith we will ask that the complainant be compelled or ordered to state the purpose of certain exhibits that may be admitted.

Your Honor, I believe we sent to counsel and to your Honor to serve as information only, a copy of what would have been a written motion. We have modified that a little in the elimination of some things that we formerly asked to strike, and I would like to make this in the form of an oral motion, your Honor.

Hearing Examiner Haycraft: Very well.

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(Tr. p. 3862)

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Mr. Royall: . . . Now, your Honor, the last one or two of these are

(Tr. p. 3863)

Exhibits 323 and 324. Now, the history of those makes it particularly important that we know——

Hearing Examiner Haycraft: I can visualize that right away. I don't agree with you that they cannot be used to show interest. I think they can. I haven't read them, but I mean just on the basis of your motion here,——

Mr. Royall (interposing): Yes, sir.

Hearing Examiner Haycraft (continuing): ——the mere fact that they were written by subordinates does not express the views of the respondent. They may not express the views, but they may disclose facts, and that is the important thing, and for that reason they would be admissions against them.

Mr. Royall: Your Honor, you have before you the views that they were—two views. First, they were furnished specifically for the cross-examination of Mr. Morgens and

were not, in our opinion, required to be produced under the subpoena, were not produced under the subpoena.

Hearing Examiner Haycraft: That wouldn't make any difference as to their admissibility.

Mr. Royall: No, sir, and they did not cross-examine Mr. Morgens about them and if we had known that they were not going to cross-examine him, we would have taken a different attitude when they were offered. They were offered at a time when the only purpose stated was to cross-examine Mr. Morgens.

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(Tr. p. 3864)

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Mr. Royall: And the documents, as your Honor has already said, were written by subordinates. And I think the other points we made, your Honor has already in mind and, therefore, it is unnecessary for me to say further, except I renew my request that they either be stricken or —if there is any other purpose it be stated. And your Honor has stated what you conceive to be the status of it. If there is any other, I would like to have him state what it is.

Hearing Examiner Haycraft: Do you have anything to add to what I said?

Mr. Tincher: No, sir; I just have a question in my own mind. I assume that our silence doesn't mean we agree with what counsel says is the purpose of the document.

Hearing Examiner Haycraft: It might indicate that you agree with what I said, though.

Mr. Tincher: Yes, sir, it does.

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(Tr. p. 3871)

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Hearing Examiner Haycraft: . . . There may be a time, as I have indicated, in this case—as I have in others—that I had a feeling as to the matter of effect of competition that that was something that had to be spelled out by the Commission from all of the facts that existed. Even the existence of competition. But the Court, as I pointed out in the International Shoe case, it was plain that they were willing to listen to opinion testimony of members in the trade that had to deal with the practical problems everyday, and I suppose to that extent they might be termed experts, and the Court took that testimony.

I am very frank to say that I don't give a whole lot of weight to such testimony, and I would rather decide a case on the facts that are developed without that type of testimony. Sometimes you can't help it, you have to have it.

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(Tr. p. 3889)

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Mr. Royall: Your Honor, we want to make a comment about expert witnesses——

Hearing Examiner Haycraft: I would rather save that for the argument at the end of the case.

Mr. Royall: This is a procedural matter.

From time to time during the hearing counsel have

(Tr. p. 3890)

stated their intention to produce a marketing expert in this case, the Examiner at one time indicated interest in one being produced.

Since any marketing and economic testimony upon which the complainant might rely would clearly be a part of the complainant's case in chief we would, of course,

object to any such witness being offered by the complainant after the close of its case in chief.

Hearing Examiner Haycraft: That would depend on whether you called one or not.

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(Tr. p. 3896)

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Mr. Royall:

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(Tr. p. 3899)

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Therefore, we withdraw our motion to strike evidence appearing in the record as we will later indicate.

Hearing Examiner Haycraft: You can hand that to the reporter, can't you?

Mr. Royall: Yes, sir; I have a list of the lines and pages on hand.

This does not, your Honor will note when you see it, include the testimony where it is inadmissible on other grounds; for example, hearsay.

We reserve the right to offer contradictory evidence and in any event we contend and will contend that this testimony appearing in the record, to which motion to strike is now withdrawn, is neither material nor relevant, and is entitled to no weight in the determination of this case.

The items of such testimony which was admitted by your Honor and then stricken on our motion——

Hearing Examiner Haycraft: You are going to give that to the reporter?

Mr. Royall: We hand that to the reporter.

(Tr. p. 3900)

(The list is as follows:

Proceedings

WITHDRAWAL OF MOTIONS TO STRIKE TESTIMONY

PAGE AND LINE(S)

p. 1685, lines 8 and 9.
p. 1686, line 24 through page 1687, line 4.
p. 1690, line 10, continuing motion to strike testimony appearing between pages 1687 and 1690.
p. 1696, line 6.
p. 1698, line 7; line 21.
p. 1699, line 14.
p. 1700, line 9; line 18.
p. 1701, line 23.
p. 1702, line 7; line 18.
p. 1703, line 1; line 9; line 20.
p. 1704, line 1; line 10.
p. 1705, line 12.
p. 1717, line 18; line 24.
p. 1719, line 15; line 24.
p. 1720, line 6.
p. 1721, line 19.
p. 1722, line 2; line 10; line 20.
p. 1723, line 3; line 16.
p. 1724, line 24.
p. 1729, line 17; line 25.
p. 1730, line 8.

(Tr. p. 3901)

p. 1731, line 5; line 13.
p. 1732, line 6; line 16.
p. 1742, line 23.
p. 1810, line 23.
p. 1811, line 8.
p. 1812, line 12.

p. 1879, strike continuing motion to testimony appearing between page 1878, line 25 and page 1879, line 15.

p. 2174, line 1; line 11.

p. 3275-B, line 12; line 20.

Mr. Royall: Your Honor, in connection with that same situation your Honor will recall that during the hearing here on August 12th I reserved my objections to certain documents which were of the same general category as this evidence.

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(Tr. p. 3902-A)

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All right, sir; we do not make any objection to those items which—I guess I better read them in the record, your Honor.

76, 82, 83, 84, 87, 88, 89, 93, 141, 143, 147, 148, 149, 152, 156, 157, 160, 168, 169, 170, 184, 188, 190, 192, 193, 195, 198, 199, 205, 206, 218, 224, 280, 281, 314, 316, 363, all relating to soaps, detergents, and cleansers.

Hearing Examiner Haycraft: In view of that then each and every exhibit which counsel has just now referred to are received in evidence.

(Thereupon, the documents referred to, heretofore marked Commission's Exhibits 76, 82, 83, 84, 87, 88, 89, 93, 141, 143, 147, 148, 149, 152, 156, 157, 160, 168, 169, 170, 184, 188, 190, 192, 193, 195, 198, 199, 205, 206, 218, 224, 280, 281, 314, 316, and 363 for identification, were received in evidence.)

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(Tr. p. 3907)

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Proceedings

Room 332
Federal Trade Commission
Washington, D. C.

Monday, 17 November 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

APPEARANCES:

WILLIAM R. TINCHER and THOMAS A. DEVENY III, Attorneys for the Federal Trade Commission.

RICHARD W. TODD, of the firm of Dinsmore, Shohl, Dinsmore and Todd, 12th Floor, Union Central Building, Cincinnati, Ohio, Attorney for the Respondent.

KENNETH C. ROYALL and F. W. R. PRIDE, of the firm of Royall, Koegel, Harris and Caskey, 100 Broadway, New York City, Attorney for the Respondent.

ROBERT D. LARSEN, 500 Wire Building, 1000 Vermont Avenue, N.W., Washington, D. C., Attorney for the Respondent.

(Tr. p. 3908)

PROCEEDINGS

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(Tr. p. 3911)

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Mr. Royall: Your Honor, as you will recall, at the last hearing we stated that we would not file and did not intend to file a written motion to dismiss these proceedings for lack of evidence, but would do so orally. We now so move; that is, move for the dismissal of the case for lack of evidence to establish any liability on the part of the respondent on any of the grounds set forth in the complaint, including the allegation that the effect of the acquisition may be sub-

stantially to lessen competition or tend to create a monopoly. We contend that on the record before you, as it now stands, the government has failed to make out a case against the defendants under Section 7 of the Clayton Act, upon which the complaint is based.

We realize, as I believe we stated on or off the record, that your Honor may desire, as many examiners do, either to reserve decision on this question or to overrule the motion at this time pending receipt of all the evidence, including the Respondent's.

Hearing Examiner Haycraft: That is my position, the latter.

(Tr. p. 3912)

For that reason, the motion is denied.

I don't want to consider this record until I have your testimony in. I think, that as we have gone along, apparently in the development of the case it is what we would call a conglomerate acquisition. Such an acquisition was mentioned in the debates and in the committee reports. And while it is new from the old statute before the amendment was put on there in 1950, I think the courts are going to have to decide just what was meant by that phrase, by that term. The only way we can get a decision from the courts is to give them a case, and that is what we have here, the first case, I believe, where the Commission has attempted to establish that type of an acquisition, showing that there has been a violation of law. We are pioneering on it.

For that reason I was quite liberal in the rulings with respect to the admission of evidence in support of the allegations of the complaint, and I will necessarily be equally liberal with you in attempting to meet those.

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Proceedings

(Tr. p. 3917)

Mr. Royall:

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I want to say it is not our intention, your Honor, to offer an economist or market expert. Complainant did not do so, and it is not our intention to do so.

Hearing Examiner Haycraft: That is a great relief to me.

Mr. Royall: I am glad to hear that, your Honor.

The reason I say that is, your Honor one time or two times said to the plaintiff that they ought to put on an expert or consider him so, and I am glad that the result which has finally arisen is satisfactory.

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(Tr. p. 3924)

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V. L. Montgomery

was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Royall:

Q. Will you state your name and address? A. V. L. Montgomery, 2917 Northwood Drive, Alameda, California.

Q. Mr. Montgomery, what is your position with the Clorox Company at this time? A. Vice president, manufacturing.

Q. Did you hold a similar position with similar functions with the Clorox Chemical Company? A. I did.

Q. When did you first come with the Clorox Chemical Company in any capacity? A. I beg your pardon?

Q. In any capacity, when did you first come with them? A. May of 1939.

Q. When did you take over the position you now hold, and whatever its title is? A. In the fall of 1953.

(Tr. p. 3925)

Q. What is your educational background, Mr. Montgomery? A. I went to Illinois and graduated as a chemist.

Q. Will you give us, very briefly, what your business experience was prior to your employment by Clorox Chemical Company? A. A complete history or just prior——

Q. Give us what business you worked in and in general what you did, not in great detail. A. Just prior to my coming with the Clorox Chemical Company I was in business in Rockford, Illinois, operating and partner of the Rockford Commercial Laboratories.

Q. What years did you work with the Rockford Laboratories, approximately? A. I believe it was in 1937.

Q. And prior to that time you had worked elsewhere? A. Prior to that I had been in research chemistry and as a superintendent of a plant.

Q. What experience, if any, did you have with liquid bleach when you were with the Rockford Commercial Laboratories? A. The Rockford Commercial Laboratories manufactured a household solution of liquid bleach.

Q. What was its name? A. It was called Wonder Wash.

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(Tr. p. 3926)

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Q. Did you yourself participate in making liquid bleach at that time? A. I am sorry, I didn't hear that.

Q. When you were with the Rockford Laboratories, did you personally have any activity about the manufacture of liquid bleach? A. I did.

Q. Will you describe what your experience there was, and what you did? A. We manufactured a household solution that was sold direct to the housewife through saleslaadies selling house to house.

Q. What was the process you used at that time? A. The process used was one of introducing chlorine into a caustic solution in a rubber-lined barrel. That was the fundamental principle.

Q. And as a result of that and further experience, are you familiar with the equipment necessary for the manufacture of

(Tr. p. 3927)

liquid bleach that is generally necessary in various sized operations? A. I am.

Q. What is the equipment necessary for a small operation, a very small operation?

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A. I am thinking of a small operation such as the one that we had in Rockford, Illinois, one of producing in volume approximating 100 to 150 gallons, or the equivalent of thirty to fifty cases a week.

Q. What would the equipment cost for an operation of that size?

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(Tr. p. 3928)

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Q. Do you know about what it would cost? A. At the present time?

Q. Yes, sir. A. I would be safe in saying that it would cost less—let us put it this way: In the magnitude

of a few hundred dollars. I wouldn't want to specify any particular amount.

Q. Do you think it would be as much as $500? A. Possibly, but I doubt it.

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(Tr. p. 3930)

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Q. The next question was and now is, Mr. Montgomery, how in general is liquid bleach made today?

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Q. Based on your experience at the present time. A. Liquid bleach today is made by—and I am only going to refer to fundamental principles involved—liquid bleach today is made by introducing chlorine into a caustic soda solution.

Hearing Examiner Haycraft: Is that in a certain proportion?

The Witness: That is in pre-determined proportions.

Hearing Examiner Haycraft: Depending on the quantity you want to make and the size of the receptacles

(Tr. p. 3931)

used.

The Witness: Those are all factors.

By Mr. Royall:

Q. In what type of vehicle is that mixed? A. It is mixed—It is processed, I think is a better form—it is processed either in a plastic or rubber-lined steel or iron container and at one time concrete tanks were used. I am not aware that any are used at the present time. But the processing goes on in protected metal containers.

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Q. The question is how and when do you determine whether the reaction which you described a moment ago is stopped, and when the—— A. In our plants we determine that point through chemical analysis.

Q. After that is determined, what step remains? Merely the bottling? A. It is a matter of clarifying the solution and then

(Tr. p. 3932)

bottling.

Q. On those particular elements that you have described, does it or does it not take know-how to produce a generally marketable bleach, any special know-how? A. That is a difficult—the matter of know-how, I am trying to define "know-how" in my own mind as to what is intended. One would have to—if I may——

Q. Yes, sir, go right ahead. A. ——add to that. Of course, it is important that one knows how to read instructions and to understand instructions. One does not necessarily have to have a chemical education, a college education.

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(Tr. p. 3934)

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The Witness: It is possible to go into a household liquid bleach business by buying concentrated bleach from those that do have the know-how and merely dilute the solution.

Hearing Examiner Haycraft: I can understand that. But his question was how to make it up; that is, he would know, at least it would be represented to him that all he had to do was add what—water?

The Witness: All he would have to do is add water.

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(Tr. p. 3935)

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Hearing Examiner Haycraft: I want the record to show what the facts are on that point. As I have said, I have had some experience with chlorine myself and it isn't anything to play with if you don't know what you are doing.

The Witness: There are definite instructions on how to handle these matters.

Hearing Examiner Haycraft: Somebody who gives those instructions must know what is to be done.

The Witness: It is a question of interpretation as to the magnitude of what we are talking about, and that is why I hesitated.

Hearing Examiner Haycraft: All right.

Go ahead.

(Tr. p. 3936)

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By Mr. Royall:

Q. In your position as Vice President in charge of manufacturing of the Clorox Company now, and the Clorox Chemical Company previously, have you had occasion to give any consideration to the quality of the product? A. Yes, sir.

Q. Have you had occasion to give consideration to the care required to make a better quality bleach? A. Yes, sir.

Q. I don't believe there are now any patents outstanding on the bleach, are there? A. We do not operate under any patents.

(Tr. p. 3937)

Q. I don't want you to go into any technical discussion, but what is one of the factors which affect the quality of the bleach? A. One that we feel is extremely important is the alkalinity balance of the solution.

Q. Does that relate to caustic in any way? You mentioned caustic. A. It is the control of the amounts of free caustic soda or sodium hydroxide remaining in the solution.

Hearing Examiner Haycraft: What are the chemical symbols of the two products that are put together? What is the resulting symbol?

The Witness: The fundamental chemical reaction—however, there are several side reactions but I do not feel capable of getting into; that is a specialists job—the fundamental chemical reaction is one between caustic soda—NaOH—and Chlorine—Cl_2—forming sodium hypochlorite, which is NaOCl; sodium chloride, which is ordinary salt; and water.

By Mr. Royall:

Q. This free caustic which you mentioned, what effect, if any, does that have on the germicidal efficiency of a liquid bleach? A. It makes it more active.

Q. More effective?

(Tr. p. 3938)

A. More effective. I speak of that—I would like to add this—I speak of that as being more active because of what our background is. We have advertised that for years, incidentally.

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Hearing Examiner Haycraft: That is a promotion letter dated July 6, 1956—372-A to -D.

By Mr. Royall:

Q. I call the witness's attention to an advertisement in 1956, from the exhibit, in which the representation is made, "No other home laundering produt equals Clorox in germ-

(Tr. p. 3939)

killing efficiency."

Are you familiar with that type of representation? A. I am.

Q. Has that same representation been made by the Clorox Chemical Company as far back as 1949 or 1950, or similar ones? A. For a number of years, yes, sir. 1949 or 1950, I would say, yes, sir, definitely.

Q. I call your attention to the representation made in Commission's Exhibit 423, "And no other home laundering product can give your Clorox cleanliness for Clorox is the most efficient germ killer of its kind."

Would you say the same about that? A. That says substantially the same thing as the other exhibit stated.

Q. And it has been in existence as long as you stated as to the other? A. As far back as you referred to, yes.

Q. I call your attention to Commission's Exhibit 424, the representation in the advertisement reading as follows, "And Clorox provides another health protection. No other home laundering product equals Clorox in germ-killing efficiency."

Is that in the same category as the others? A. That is in the same category.

(Tr. p. 3940)

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Q. Mr. Montgomery, do you know whether representations of that nature were at one time the subject of inquiry by the Federal Trade Commission to determine whether they were correct and fair representations? Do you know that, of your own knowledge?

Mr. Tincher: Mr. Examiner, I object to that. I further raise——

Hearing Examiner Haycraft: I don't see anything to be gained by that question.

Mr. Royall: May I state the purpose of it?

Hearing Examiner Haycraft: Yes. I would like to have it.

Mr. Royall: My purpose, your Honor, is to show—and we are going to offer certain records of the Commission to show—that statements of substantially the same character were investigated by the Commission and after the investigation was completed the matter was closed.

Hearing Examiner Haycraft: So what? What has that to do with this proceeding?

Mr. Royall: Well, sir, I reckon I will just give

(Tr. p. 3941)

away my hand.

Hearing Examiner Haycraft: Yes. I can't see the relevancy of it.

Mr. Royall: The relevancy is this, your Honor: This is a representation of added quality of Clorox which only Procter and Gamble is authorized to make, and the Commission, on investigating that in 1950, acted as the letters, which I will offer in a few minutes, will disclose.

Hearing Examiner Haycraft: What has that to do with the violations of Section 7 of the Clayton Act in the acquisition of the Clorox Chemical Company by Procter and Gamble? Suppose Clorox Chemical Company did make such a representation, and assuming it is true.

Mr. Royall: If it is true, it is a better product.

Hearing Examiner Haycraft: A better product than its competitors?

Mr. Royall: That's right.

Hearing Examiner Haycraft: That would be all the more reason why Procter and Gamble would want it. Still we don't know why.

Mr. Royall: That was true before. We are contrasting before and after.

Hearing Examiner Haycraft: It still is, I suppose. I don't suppose you have deteriorated it. I don't see what value that can have, what probative value it can have in

(Tr. p. 3942)

this proceeding.

Mr. Royall: You don't think it makes any difference whether it is a better product?

Hearing Examiner Haycraft: No. It is a good product.

Mr. Royall: Can we stipulate in the record that it is a better product?

Hearing Examiner Haycraft: No, but you can frame an offer of proof, if you want to.

I will sustain the objection to that line of questioning.

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Mr. Royall: Your Honor, I don't want to prolong any argument. I would like to say that this evidence of superior quality also ties in with the price situation.

Your Honor, I would like to make an offer of proof.

Hearing Examiner Haycraft: All right.

Mr. Royall: The question asked the witness will be this: Does the Clorox bleach have a quality superior to other bleaches in the matter of germicidal efficiency?

Mr. Tincher: Do you want to hear my objection to that?

(Tr. p. 3943)

Hearing Examiner Haycraft: You have already objected and I sustained your objection.

This is an offer of proof.

Mr. Royall: If the witness were permitted to testify he would say it does by reason of the lower amount of free caustic.

The second question is: Were the representations identical in substance with those in Commission's Exhibit 372, 423, and 424 challenged by the Commission in 1950 and the investigation dropped in 1951?

Hearing Examiner Haycraft: He objected to that and I sustained the objection.

Mr. Royall: The witness, if permitted to answer, would state that that is correct.

The next question of the witness would be, is Clorox bleach manufactured at this time in the same way as it was in 1949 and 1950, and since that date, particularly with reference to its germicidal efficiency.

Hearing Examiner Haycraft: The same objection, and that objection would be sustained.

Mr. Royall: The witness, if permitted to answer, would say Yes.

Mr. Tincher: May I ask for my own information, sir, at this point and throughout the hearings, if you accept proffers of cross-examination? Some do and some don't.

(Tr. p. 3944)

Mr. Royall: Your Honor specifically ruled that you wouldn't accept it from us in any part of our case.

Hearing Examiner Haycraft: I haven't been following that strictly.

Mr. Royall: Your Honor, in view of your rulings in this matter, we will dispense with an additional witness on this same subject.

By Mr. Royall:

Q. Mr. Montgomery, do you know who makes the caustic soda and chlorine used in liquid bleach? What sort of companies? A. Yes, I do.

Q. Can you name a few of them? Not all of them, just a few of them.

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A. Hooker Chemical——

Hearing Examiner Haycraft: It all goes to the availability of competitors in this area, in this field.

Mr. Tincher: To save time, we are happy to stipulate that there is no shortage of materials necessary for making liquid bleach.

Hearing Examiner Haycraft: How do we know; how does he know?

Mr. Royall: If you want to stipulate——

(Tr. p. 3945)

Hearing Examiner Haycraft: Go ahead. You can bring out the facts.

Mr. Tincher: I am just trying to save time.

(Tr. p. 3946)

By Mr. Royall:

Q. You started to name some companies? A. I will start from the west coast and work eastward.

Hooker Chemical, Dow Chemical, Stauffer;——

Hearing Examiner Haycraft: If there is any probative value to it, do you know where they are located?

The Witness: I don't know that I can recall the exact location where each company has all of its plants. I believe that I can come quite close.

Hooker Chemical Company has a plant in Tacoma, Washington and one in Midland, Michigan.

Let's put it this way. They have one in Michigan.

Stauffer Chemical Company has one in Henderson, Nevada.

Dow Chemical has one at I believe it is Pittsburg, California.

Frontier Chemical has one plant at Wichita, Kansas.

Diamond Alkali has a plant at Pasadena, Texas, Painesville, Ohio, and they I believe are operating the old Muscle Shoals plant, and I believe that is in Tennessee. I am not sure.

Wyandotte Chemical has a plant in Wyandotte, Michigan. They are building a new plant—it may already be in operation—in Louisiana.

Solvay has plants in two or three spots in the East.

(Tr. p. 3947)

They have one in New York, they have one in Georgia that I can recall.

Mathieson—Olin Mathieson have two or three plants, one at Saltville; they have one at McIntosh, and I believe the state is Alabama, but I am not sure of that.

Columbia Southern is another big one—and all of these are large operators, large operations——

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The Witness: Columbia Southern have plants—I know of one in Houston, Texas. The locations of their other plants slip my mind at the present.

Westvaco, which is part of Food Machinery, have a plant in I believe Charleston, South Carolina.

Pennsylvania Salt Company is another.

That names those which come to me at the moment, and I think that is the major portion of them.

By Mr. Royall:

Q. Are the raw materials I referred to, caustic soda and cholerine, readily available to purchasers? A. They are.

Q. Do a certain number of the makers of caustic soda and

(Tr. p. 3948)

cholerine publish or distribute any pamphlets or booklets concerning the method of making bleach? A. They do, yes.

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Q. Do all the plants you mentioned manufacture cholerine and caustic soda? A. They manufacture both of the products, caustic and cholerine.

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(Tr. p. 3956)

Q. Will you describe the type of plant that is used by the Clorox Company?

Hearing Examiner Haycraft: What do you mean by "type"?

Mr. Royall: Just a rough description of the building. That is all I am asking for.

Hearing Examiner Haycraft: Go ahead. Answer, if you can.

The Witness: I am thinking of it in terms of a

(Tr. p. 3957)

warehouse-type of building, a multi-purpose building where we have a small office, a processing portion, a bottling portion, where we have our bottling line, and the balance of the building being used for warehousing of the produced stock.

Does that answer it?

By Mr. Royall:

Q. Of course you are familiar with the machinery and type of operation they have? A. Yes, I am.

Q. That is one of your principal responsibilities, is it not? A. It is.

Q. Mr. Montgomery, have you, incidentally, had an opportunity to see any of the Procter and Gamble soap and detergent plants? A. Yes, I have.

Q. Which ones have you seen? Give us a couple of them. A. I have seen the one at Quincy, Massachusetts; and I have seen the one in Kansas City, Kansas.

Q. Could the machinery and equipment used in manufacturing soap and detergents be used to make liquid bleach? A. I do not believe they could.

Q. What are the principal reasons why they could not? A. There is one principal reason why they could not, and

(Tr. p. 3958)

that is that in the manufacturing of sodium hypochlorite solution we need our equipment, tanks in particular, and certain portions of our filling lines, protected with plastic or with rubber. That is not necessary—that is what we have in our plants. I have never seen anything like that in the soap plants.

Q. You have given some testimony about the cost of a small plant. A. May I correct that?

Q. Yes, sir. A. When I was talking about the cost of a small plant, when I was referring to a few hundred dollars, I was specifically thinking of equipment. I was not thinking of a building.

Q. I see. All right, sir.

As to the building, considering the smallest type of bleach plant, what sort of building could be used for it? A. I don't mean to sound facetious, but you can do it in a garage.

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(Tr. p. 3960)

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Q. What experience, if any, have you had that would familiarize you with the cost of constructing a plant and equipping it? Give us what experience you have had. A. The first experience that I have had with this company—and that experience was as a division production manager—was to supervise the construction of a plant in Kansas City, Missouri.

Hearing Examiner Haycraft: When?

The Witness: About, approximately eight or nine years ago. It was the year of the big flood in Kansas City.

Hearing Examiner Haycraft: That isn't enough. I want to advise you this, so we will save some time: If you think that is an issue in this case and you are putting that up as a defense, the availability of plants and buildings, the cost at which they can be built, and raw material, I

(Tr. p. 3961)

think it has limited value but I think you are entitled to it, but you must do it by the best evidence, and that is the man who built it.

A man could go out here and engage in the building or installation of such a thing, primarily a man who manufactured it and has it for sale. If you want to prove that, that is the way to do it. You are not going to take this witness who hasn't had any experience in that in the last year or two. There is raw material and the value of many things.

If you want to make a contention to this Federal Trade Commission that anybody can go out here and build a plant to compete with Clorox successfully, you are going to have to have the best evidence. I am not going to deprive

you of proving it but I am going to deprive you of proving that testimony with this type of witness.

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By Mr. Royall:

Q. After that one in Kansas City, what other experience

(Tr. p. 3962)

have you had? A. I would rather answer it in this manner: My responsibility now is this, and I must qualify it to the extent that I am not a construction engineer, but the engineering and designing and building of our plants the last two or three years have been under my supervision.

Q. Which plants have been constructed which would familiarize you with the cost? A. The last one was Boston, Massachusetts.

Q. Were there any in between? A. We have studied construction costs for other plants. As a matter of fact——

Q. The one in Boston was built when? A. It was put into operation in 1956.

Q. Are you familiar with the building costs in general of that type of plant between 1956 and the present time? A. I——

Q. Do you know approximately the increase in cost, if any? A. Approximately. But I am no authority on this. I take my figures from the American Appraisal Information that I get.

Q. Do you know from your own knowledge what the actual cost was in the Boston plant? A. I do know.

Q. In 1956?

(Tr. p. 3963)

A. I do know this.

Q. Have you an opinion satisfactory to yourself as to what the cost would be of constructing and equipping a plant, we will say, capable of producing 250,000 cases of bleach per year?

Mr. Tincher: Mr. Examiner, this witness——

Mr. Royall: I am trying to qualify him first.

Mr. Tincher: This witness couldn't give an opinion on that. All he could testify about is what the Boston plant cost in 1956. That is the only qualification he has shown on the record. We must remember that the Boston situation is confused because the plant, as the record shows, was subsequently shut down.

Mr. Royall: And subsequently re-opened.

Mr. Tincher: That is right.

Hearing Examiner Haycraft: I will sustain the objection.

Mr. Royall: Your Honor, may I tender the answer that he would give, that he would say that he did have an opinion satisfactory to himself?

Hearing Examiner Haycraft: Yes.

Mr. Royall: The next question I would ask him, your Honor, would be: What would be the approximate cost of a plant producing 250,000 cases of liquid bleach per year? Your Honor would sustain that?

(Tr. p. 3964)

Mr. Tincher: I object.

Hearing Examiner Haycraft: At what time?

Mr. Royall: At the present time.

Hearing Examiner Haycraft: Yes.

Mr. Royall: If permitted to answer, I tender, your Honor, he would say about $120,000 if you bought the land and constructed the building.

The next question would be, what would such a plant cost if the building were leased. Your Honor would sustain that?

Hearing Examiner Haycraft: Yes. And we will assume the question was asked, that an objection was made, and the objection sustained.

Mr. Royall: The witness would testify, if permitted to answer, that the cost would be about $60,000.

And the next question would be, and this is the last one in this line, if such a plant had an added capacity of 150,000 cases—that is, totalling 400,000 cases per year, how much additional cost would be required.

Hearing Examiner Haycraft: I will assume the same objection.

Mr. Tincher: Yes, sir.

Hearing Examiner Haycraft: Same ruling.

Mr. Royall: The witness, if permitted to answer, would say approximately $5,000.

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(Tr. p. 3971)

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CROSS-EXAMINATION

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(Tr. p. 3976)

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By Mr. Tincher:

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(Tr. p. 3978)

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Q. The Clorox Chemical Company has and has had research done for it by the Stanford Research Institute, has it not? A. Yes, it has.

Q. And the same for the Clorox Company? A. The same as the——

Q. I say, the same for the Clorox Company? A. Yes, that is my understanding.

Q. And the Clorox Company has had research done for it by the Procter and Gamble Company in Cincinnati, has it not?

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(Tr. p. 3979)

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A. To my knowledge, Procter and Gamble Laboratories have not done any research work on liquid sodium hypochlorite solutions.

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Q. How many chemists does the Clorox Company have working for it? A. Would you accept an estimate? It is around 25 or 30. In that magnitude.

Q. Do you have a chemist at each of your production facilities? A. Yes.

Q. At least one?

(Tr. p. 3980)

A. At least one.

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(Tr. p. 3985)

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Q. A sodium hypochlorite liquid bleach has to be made exactly right or it can ruin the clothes in the washing process, can it not? A. You would have to define "exactly right" to me. You would have to qualify that question as to what is "exactly right." I couldn't answer that.

Q. Let's take Clorox. It is a 5.25 sodium hypochlorite solution. A. It is.

Q. And that has to be a uniform percentage, does it not, from your company's viewpoint? A. Our label strength guarantees or refers to the label strength as a minimum of 5¼ percent sodium hypochlorite

(Tr. p. 3986)

and we make every attempt to adhere to that standard.

Q. How do you achieve such a standard? A. By very close controls.

Hearing Examiner Haycraft: What are those controls?

The Witness: Through chemical analysis, first by measuring the material that is to be used, specifically sodium hypochlorite and the water, preparing an alkaline solution of pre-determined strength. We then introduce chlorine into this alkaline solution, and through chemical analysis made at various times during the chlorinization process, we determine the extent of the chlorinization. We determine the presence of certain caustic and alkaline salts. And when we have chlorinated to what we will refer to as the batch, when we have processed or chlorinated the batch to where there is no free caustic and where we have diluted it with water to properly prepare for the—rather, to obtain the proper sodium hypochlorite concentration, we then call it a finished batch.

Hearing Examiner Haycraft: Do you do that to every batch, or spot check?

The Witness: We do that to every batch. To every batch.

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(Tr. p. 3987)

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Hearing Examiner Haycraft: If you get too strong a solution of free alkali in there, will that cause an injury to fabric?

The Witness: In my opinion, the greater amount of caustic in the solution, the more injurious that it will be to fabrics.

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(Tr. p. 3991)

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Q. What are the duties of a chemist at your production facilities?

(Tr. p. 3992)

A. The duties of a chemist at one of our production units is primarily to be responsible for the operations of the process operators and of the manufacture of Clorox, of the sodium hypochlorite solution, among other duties such as helping the plant manager supervise the plant.

Q. Is one of those duties the overseeing of the quality controls to make certain it is uniform? A. That is correct.

Q. Does the Clorox Company buy concentrate and cut it to make liquid bleach? A. We do not.

Q. Did the Clorox Chemical Company? A. They did not.

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(Tr. p. 3993)

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Q. In other words, the cost of production of a large company, such as Clorox, is much less than the cost of production of a small company? A. I couldn't say that. I don't know anything about the cost of other companies, operating costs. I don't know.

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(Tr. p. 3999)

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Q. I want to be sure I understand this Boston situation. When was that plant completed? A. I am not sure of this, but I believe it was in the early part of 1956. It was in 1956, I believe.

Q. Then, it was placed into operation; when did it cease producing liquid bleach? A. Sometime in 1957.

Q. Is it producing liquid bleach today? A. Yes, it is.

Q. When did the production commence again? A. About July of this year.

Q. Between June 30, 1955 and June 30, 1956, were any other plants built for the production of Clorox?

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A. I will have to answer to this extent: We built—I will answer your question by saying Yes.

By Mr. Tincher:

Q. The Cleveland Branch? A. That was Cleveland. And that was a replacement of an old plant.

Q. Outside of the Cleveland plant and the Boston plant, were any plants built, completed, between June 30, 1955 and

(Tr. p. 4000)

June 30, 1956? A. I do not believe so. I would have to have the record to look at. I don't believe so.

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Q. In that period of time, were any additions made to existing plants?

* * * * * *

A. Any additions? You are referring to plant capacities, physical capacities, that sort of thing?

By Mr. Tincher:

Q. Additions in any way. Anything that would be car-

ried on the books of the Company as plants, property, equipment.

* * * * *

A. Without referring to the record, I believe I would be correct in stating that we did make certain capital expenditures which would improve our equipment or enlarge upon our capacities. It is conceivable that we did so. But I can

(Tr. p. 4001)

not give you a specific yes or no.

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(Tr. p. 4003)

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Q. The manufacture of liquid bleach, once you get past the point of preparing the solution, is basically a bottling process, is it not? A. After you get by the basic solution?

(Tr. p. 4004)

Q. Yes.

* * * * *

A. After the solution has been processed, your Honor, it is necessary to allow it to clarify.

Hearing Examiner Haycraft: Clarify?

The Witness: To clarify, yes. After that, it is a bottling process.

By Mr. Tincher:

Q. And the bottling process can be done on liquid detergent bottling machines as well as on those used for liquid bleaches, can it not? A. No, it can not.

Q. What is the reason for that, sir? A. Differences in types of material and construction necessary and the difference in the types of filling.

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V. L. Montgomery—Redirect

(Tr. p. 4006)

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REDIRECT EXAMINATION

By Mr. Royall:

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(Tr. p. 4007)

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Q. One other thing. Mr. Tincher asked you about the use of plant chemists in testing your products. Did that test include a test as to free caustic which is related to germicidal effect? A. Those tests included that.

Q. Notwithstanding the expiration of your patent some years ago, do you still manufacture bleach and test bleach in the manner you described in your testimony this morning? A. You are correct in that.

Q. Has there been any change? A. There has been no change.

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(Tr. p. 4012)

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M. A. Leazar

was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: State your full name and address.

The Witness: My name is M. A. Leazar—L-e-a-z-a-r—3022 East Houseton Street, San Antonio, Texas.

By Mr. Royall:

Q. Mr. Leazar, what is your occupation? A. I am

Vice President and Purchasing Director of the Handy-Andy Super Markets, San Antonio, Texas.

Q. How many Super Market do you operate? A. A total of 24.

Q. Are they all in Texas? A. Yes, sir.

Q. Is it a closely held corporation? A. Very closely held, yes, sir.

Q. How long have you been with that Company? A. Slightly over 26 years.

Q. What are your present duties as president and purchasing agent? A. Correction, sir. Vice President.

(Tr. p. 4012-A)

Q. What are your duties as Vice President and Purchasing Agent? A. I, of course, perform the average duties of an officer of the Company, and in addition to that, as Purchasing Director, I have full charge of the items that are procured for the Company in all divisions as to quality and quantity.

Q. What responsibility do you have to the actual operation of the Super markets themselves? A. Well, my job, of course has to do with the maximization of profits for the Company, obviously, and watch turn-over and procurement.

Q. Procurement? A. Yes, sir.

Q. That would include the purchase of liquid bleach, among other things, would it? A. It would; yes, sir.

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(Tr. p. 4028)

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Q. Since the acquisition of Clorox by Procter and Gamble, has there been any change in the amount or propor-

tion of shelf space allocated to Clorox bleach? A. No, sir.

Q. What is your general policy in the allocation of shelf space, and how does that policy apply as between larger volume and lower volume companies? A. The normal policy, or the policy—let me rephrase that—is to permit the store manager at individual level stores to go ahead and make his own facings based upon customer preference by brands. That is the normal procedure. And of course in so doing we obviously can't cut it down less than one or two spaces because it will be lost in the shuffle, so to speak, if I might use that word loosely. So in most instances, I feel that the lesser sellers possibly get more shelf space than possibly the number one.

(Tr. p. 4029)

Q. You mean more in proportion to the volume? A. That is right. More in proportion to what their volume would indicate, yes, sir.

* * * * *

Hearing Examiner Haycraft: How is the store manager to determine the customer preference?

The Witness: Well, actually it is determined by movement, your Honor.

Hearing Examiner Haycraft: Turn-over movement?

The Witness: Yes, sir, that is right.

By Mr. Royall:

Q. I assume that Handy-Andy Supermarket sells products manufactured by Procter and Gamble themselves? A. Yes, sir, that is right.

Q. Do you carry all their products? A. All that they manufacture? No, not all of them.

* * * * *

M. A. Leazar—Direct

(Tr. p. 4030)

* * * * *

Q. Does the fact that you sell other Procter and Gamble products and that Procter and Gamble owns the Clorox Company have any effect on the amount of shelf space assigned to Clorox bleach? A. It would have no effect on it, no, sir.

* * * * *

Q. Where are liquid bleaches generally found in your supermarkets? A. Generally with the starches and the general cleansing items. Exclusive in many instances of the mops and pails. The modern stores don't build their fixtures the way they used to.

Q. How are they located in your normal operations as to where soaps and detergents are located? A. They may be located adjacent to the soaps and detergents. We do not permit the putting of those—intermingling of those, I should say.

(Tr. p. 4031)

Q. Does the fact that Procter and Gamble owns Clorox in any way force you—and I use that word in quotation marks—to buy more Clorox in order to obtain Procter and Gamble products? A. That question, within the scope of it, just seems to be asinine to me because we run our own business. And no one has ever, and I hope will never, force us to buy anything we don't need. I would definitely say that that is an impossibility.

Q. Has Procter and Gamble ever tried to force you to buy Clorox? A. No, sir.

Q. From whom do you buy your Clorox? A. It is purchased through a brokerage firm.

Q. John Mangum? A. That is correct.

Q. Has there been any change since the acquisition in his methods or activities? A. None whatsoever.

Q. So far as your operations are concerned, is there any difference to you and your operations whether goods are sold you by distributors or by direct salesmen of the manufacturing company? A. No, sir. It would make no difference to us where we procured them.

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(Tr. p. 4034)

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Room 332
Federal Trade Commission
Washington, D. C.

Tuesday, 18 November 1958

Met, pursuant to adjournment, at 9:30 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 4035)

PROCEEDINGS

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M. A. Leazar

resumed the stand as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (resumed)

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(Tr. p. 4049)

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Mr. Tincher:

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(Tr. p. 4050)

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But the question is—and there is no allegation in the complaint that Procter and Gamble gets more shelf space than their share of the market—the question is the ability of the small producers to obtain any shelf space, and if so, how much?

* * * * *

(Tr. p. 4062)

By Mr. Royall:

Q. Can you tell us the prices at which Purex and Clorox sell in your stores? Maybe you have to have a memorandum on that. I don't know. You have so many figures in mind. A. We have about six——

Q. Give it to us in quarts and gallons, if you can remember? A. Nineteen and fifty-nine.

Q. Nineteen cents a quart and 59 cents a gallon? A. Yes, sir.

* * * * *

Q. Are the prices the same in Purex and Clorox? A. Yes, sir.

Q. Fleecy White sells in quarts and gallons. What are their prices? A. Seventeen and 53, is my recollection.

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(Tr. p. 4063)

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Hearing Examiner Haycraft: That difference in price, is that because Fleecy White is not an advertised product, not nationally advertised?

The Witness: Well, not necessarily, sir. We base our retails on our cost.

Hearing Examiner Haycraft: You also base it on public demand?

The Witness: On what?

Hearing Examiner Haycraft: On the demand for the product.

The Witness: We like to take an average mark-up categorically based on cost, rather than, if I might use the

(Tr. p. 4064)

phraseology, of "all the traffic will bear." We do not adhere to that policy. We do not think that is good business.

Hearing Examiner Haycraft: So you buy that cheaper?

The Witness: Yes, sir. It comes to us cheaper, therefore, we sell it cheaper. The mark-up factor is for all practical purposes the same on all lines.

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CROSS-EXAMINATION

By Mr. Tincher:

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(Tr. p. 4069)

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Q. You testified yesterday that there were some Procter and Gamble brands—and I refer to Procter and Gamble—there were some P&G brands you do not carry; is that correct? A. That is correct.

Q. What are those brands? A. We do not carry the P&G laundry soap. Are you speaking of the present tense?

Q. Yes. A. We do not carry that. We do not carry Duz. There are some items in Camay toilet in colors, specific colors now, that we do not carry. And there are some sizes that Procter and Gamble make and sell of other items which we do not stock. In other words, there might

be four sizes of one particular brand of goods and we might stock three or perhaps two of them.

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(Tr. p. 4071)

* * * * *

Q. How about liquid bleaches? You don't have any private brands?

(Tr. p. 4072)

A. No, sir.

Q. I believe you testified yesterday that shelf space is determined by turnover which in turn is determined by consumer preference; is that right? A. With this proviso, sir: That originally that shelf space is determined by the manager. I wish to make that point.

Q. At some starting point? There has to be a starting point. Is that what you mean? A. That is correct.

Q. And he will fluctuate with that as his experience proves the product sells or dosen't sell? A. That is correct. That is our policy.

Q. What factors determine the customer preference as to whether the products do sell or do not sell in your store? A. Actual movement off of the shelf would be that indicator.

Q. That is the indicator? That is the result? A. That's right.

Q. What determines whether that result is going to come about or not? A. Well, of course, all my facts and figures are actually based upon actual movements or actual things that happen, not on what may cause the item to move. And certainly consumer acceptance is the prime objective to movement: That is why we stock and buy items.

Hearing Examiner Haycraft: What he wants to know is

(Tr. p. 4073)

how is that consumer acceptance obtained?

The Witness: Through many, many methods, your Honor.

Hearing Examiner Haycraft: That is what he wants.

The Witness: They are very voluminous.

Hearing Examiner Haycraft: That is what he wants you to tell him.

The Witness: It can be done by consistent advertising, radio, television. You name it. They could have many other gimmicks that are paramount to the super market industry, not particularly as to bleach or soaps. There are just any number of items that would cause a product to move.

By Mr. Tincher:

Q. Among those things would be such things as coupons? A. Yes, coupons are used for promotional purposes. If I might inject my individual thoughts, however, I personally don't feel the manufacturer is doing too well with coupons.

* * * * *

(Tr. p. 4081)

By Mr. Tincher:

Q. Yesterday you testified that P&G had not tried to force you, and counsel asked the question with the words, as he told you, "force" in quotes. Just what did you mean when you answered that, that they hadn't tried to "force" you? A. Force to do what?

Q. To buy Procter and Gamble products if you wanted Clorox, or the contrary also. A. I interpreted the question to mean that if we wanted to purchase soap products from Procter and Gamble we would have to buy Clorox.

And by that interpretation I would mean perhaps all sizes or something like that. We definitely are not being forced to buy anything we don't want.

Q. The matter of forcing in grocery merchandise by all suppliers is over, is it not? A. It is as far as our firm is concerned.

Q. And Procter and Gamble and General Foods or nobody else can force you to buy anything, can they? A. No, sir, I don't think they could.

Q. As a matter of fact also, the Procter and Gamble Company and its salesmen and representatives have never even tried to sell you any Clorox, have they? A. Procter and Gamble, no. They don't market it. It is marketed under a——

Q. I realize that. But, independent of how it is marketed,

(Tr. p. 4082)

no Procter and Gamble salesman or division manager or superior in any way has talked to you about Clorox or tried to get you to buy Clorox? A. No, sir.

Q. And those same salesmen and persons do sell you the Procter and Gamble products? A. Yes.

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(Tr. p. 4088)

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Q. And the reason that you happen to be advertising that product is because of the cooperative advertising allowance from Procter and Gamble; is that correct?

* * * * *

A. No, sir. If I made that statement I did not intend to. I don't think I did, incidentally. No, definitely not. As I stated, we do not write our ads based upon cooperative

advertising. We feel that those types of ads are not good ads in our terminology. We must have a cross-advertising

(Tr. p. 4089)

of all items, in those brands and sizes and what have you that will produce traffic for us. If we get paid for an individual segment of it by reason of cooperative contracts, fine. If we don't, the ad still stands as originally written. I don't know whether I made myself clear on that. Definitely we do not advertise an individual item just because we have a cooperative contract. There are instances of course where that will happen, but deliberately we do not advertise because of a contract.

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(Tr. p. 4092)

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Q. You testified yesterday, sir, that you never mix in displaying, you never mix liquid bleach and soap, detergents

(Tr. p. 4093)

and cleansers, is that right? A. As to having a bleach next to a soap or an individual product, no. Where they cut off and end there might be an end of the bleach section and starches and soaps would start thereafter. But "intermingled" I think was the terminology.

Q. Yes. Why is it you don't intermingle? A. We think that the products are entirely different. That is my individual thought on the thing. I don't see that the bleach and soap is related in the end result of the two products. In other words, if you need soap you need soap. If you need bleach it is bleach. I don't think there is that close a relationship in stacking them together.

Q. You will buy them both. You won't buy bleach in place of detergent. A. That is right. You buy what you went in there to buy.

Q. As a matter of fact, even within the soap-detergent-cleanser section you don't intermingle heavy-duty and light-duty and liquids and solids, do you, or granulars? You have separate sections for each, don't you? A. That is a debatable question, sir, and it hasn't been proved to our satisfaction one way or another. There have been attempts to segregate heavy-duty, light-duty, and what have you. We have never adopted a particular style because the results one way or another have not shown us anything.

Q. What do you do? That is what I am interested in.

(Tr. p. 4094)

A. They are stocked and positioned shelf-wise according to the individual manager's own selection as to how he feels possibly they should be grouped, plus a customer inquiry that she won't find an item. Then perhaps we might think she is looking at an individual item in a given place and move it, possibly.

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(Tr. p. 4098)

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Q. What do you pay for Purex and Clorox and Fleecy White? A. I will have to refer to my records on that, sir. I do not know.

* * * * *

The Witness: Of course, Clorox and Purex are the same price. I will quote them as one. 24 pints cost $2.26 per case; 12 quarts, $1.91 per case; 6 half gallons, $1.86 per case; 4 one gallons, $1.98 per case. That is the list price of both Purex and Clorox.

By Mr. Tincher:

Q. Is there any discount? A. There is a quantity discount of two percent.

Q. Is there an additional two percent discount for cash payment? A. Two percent on Clorox and two percent on Purex.

Q. Now, will you give us the Fleecy White prices? A. Quarts of Fleecy White, 12 quarts that is, $1.71 per

(Tr. p. 4099)

case. And four one gallons, $1.68.

Q. What discount structures are in those prices? A. Two percent cash.

Q. Any quantity discounts? A. No, sir. I do not see them listed on the invoice. If there is, there are none shown. No, there are none shown.

Q. No discounts at all, period? A. No.

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(Tr. p. 4113)

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Arnold L. Royer

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: What is your full name and address?

The Witness: Arnold L. Royer.

* * * * *

By Mr. Larsen:

Q. What is your occupation, Mr. Royer? A. The Manager of General Advertising, Cleveland Press.

Q. What do those duties as Manager of General Advertising entail? A. Supervision and operation of our sales activities in the general advertising field.

Q. As an adjunct of that supervision, sir, do you have any connection with the Cleveland Press Consumer Panel? A. Yes.

Q. What is your connection with that Panel? A. Well, the Cleveland Consumer Panel is sponsored by the Cleveland Press and by my department at the Cleveland Press.

(Tr. p. 4114)

Q. Would you describe generally the nature of the Panel, what its purpose is, those facts? A. The purpose of the Panel is to reflect consumer buying habits of branded merchandise within the market.

* * * * *

Q. I believe you said, Mr. Royer, that the purpose for the Cleveland Consumer Panel was to reflect consumer buying habits and was a service to your advertisers? A. Right. It is a service to manufacturers of branded goods, either who are our advertisers or who are potential advertisers. It is also a means of securing brand movement information which we are interested in securing ourselves.

Q. To whom are the results of the survey distributed? A. Largely to manufacturers, advertising agencies representing manufacturers.

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(Tr. p. 4115)

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Q. Speaking of cost, is this undertaking which you have in the Cleveland Consumer Press an expensive process for

you? A. Yes. The conduct of this study costs us about $50,000 a year. It means an expenditure over a period of the last ten years of about a half a million dollars.

Q. How long have you been carrying on this type of service? A. The Panel is over ten years old at the present time. Since 1947.

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(Tr. p. 4121)

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Q. Mr. Royer, I now show you Respondent's Exhibit 63 for identification, and ask you to tell me what it is? A. It is the Cleveland Press Consumer Panel report, quarterly report.

(Tr. p. 4122)

Q. For what period? A. July, August, and September, 1957.

Q. I now show you page 49 of that report. To what commodity does this page refer? A. It has to do with liquid bleach.

Q. What report period does this cover? I am referring now to page 49. A. July, August, and September, 1957.

* * * * *

Q. Does the record show what method of distribution, or through what channel of distribution the merchandise was

(Tr. p. 4123)

purchased? A. Yes. The respondents in the Panel are asked to list the place where this product was obtained, either in a store or however it might be.

* * * * *

Q. Mr. Royer, in your opinion, does page 49 of Respondent's Exhibit 63 accurately reflect the bleach pur-

chases in the July-August-September period in Cleveland, and the channels of distribution through which they were purchased.

Mr. Tincher: I object to that. This witness hasn't been shown to be the least qualified to testify about bleach purchases in Cleveland or any place else.

* * * * *

(Tr. p. 4125)

Hearing Examiner Haycraft: Are you asking quantity?

Mr. Larsen: I am asking both share of market and distribution as reflected by the Cleveland Consumer Panel.

Hearing Examiner Haycraft: There is a difference there.

I will have to voir dire a little myself.

In preparing this exhibit is it your purpose to advise your clientele, your customers, the exact volume or the volume of business done, or the share of the market or the trend of the market?

The Witness: All three of those elements would be contained in our study, either in a given report or over a period of a number of reports.

Hearing Examiner Haycraft: In other words, it is your contention that those figures are projectable?

The Witness: Yes.

Hearing Examiner Haycraft: That by making this sample of the 500 families as you made them, that you feel that the total figures that you get can be projected to give the total actual purchases in that area?

The Witness: Within a reasonable degree of research error.

Hearing Examiner Haycraft: It also gives you the trend and the share of the market?

The Witness: Yes.

(Tr. p. 4126)

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Hearing Examiner Haycraft: The entire line of testimony is very good. In my judgment he has laid a very proper foundation for his final question.

Mr. Tincher: Yes, sir. My contention is that you can't get opinions from witnesses unless you establish them as an expert.

Hearing Examiner Haycraft: This witness is an expert. That is his business.

Mr. Tincher: It hasn't been shown that he is a statistician.

Hearing Examiner Haycraft: To my satisfaction it has.

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(Tr. p. 4128)

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Mr. Larsen:

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I would also like marked for identification the Cleveland Press, Cleveland Consumer Panel for April-May-June 1958, as Respondent's Exhibit 64.

(The document referred to was marked Respondent's Exhibit 64, for identification.)

By Mr. Larsen:

Q. Mr. Royer, what is Respondent's Exhibit 64, to make it very brief? A. This is the Cleveland Consumer Panel quarterly report for April-May-June 1958.

Q. What is the latest report, published report which you have from the Cleveland Consumer Panel? A. That is it right there.

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(Tr. p. 4131)

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Mr. Larsen: Your Honor, this might shorten this particular cross-examination; I don't know. On the exhibits we offered before the recess, RX-63 and 64, I want to point out that we are not offering those in any way to vary at all from the Nielsen figures, which were stipulated at the Chicago hearing. In fact, none of the figures which we will offer during our defense or at any time are for the purpose of contradicting any of the Nielsen figures, either nationally or in any locality or any figures that have or may be offered.

Of course, these figures, the Cleveland Press Surveys, show channels of distribution, which is different information than that which can contained in Nielsen. We offer Respondent's Exhibits 63 and 64 for the sole purpose of showing those channels of distribution.

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Hearing Examiner Haycraft: Are you referring now to the percentage figures at the bottom of the page?

(Tr. p. 4132)

Mr. Larsen: Yes, sir.

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Hearing Examiner Haycraft: Do you want to cross-examine on the voir dire?

Mr. Tincher: Yes, sir.

VOIR DIRE EXAMINATION

By Mr. Tincher:

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(Tr. p. 4138)

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Mr. Tincher: Sir, I think on that basis alone there is no question about this witness being competent to offer these

documents as the exhibit itself states, which has been offered. I engage in the practice of not reading

(Tr. p. 4139)

in the record what the exhibit states, but I refer to your attention who conducts this survey. Coupled with the testimony of the witness; this witness simply is not qualified to offer this survey because he is not some one——

Hearing Examiner Haycraft:

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(Tr. p. 4140)

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Your objection is overruled on the exhibits and they are received in evidence.

(Whereupon, the documents referred to, heretofore marked Respondent's Exhibits 63, 64, and 65 for identification, were received in evidence.)

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(Tr. p. 4191)

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Room 332
Federal Trade Commission
Washington, D. C.

Wednesday, 19 November 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 4192)

PROCEEDINGS

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Bernard F. Trimpe—Direct

(Tr. p. 4200)

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Bernard F. Trimpe

was called as a witness on behalf of the Respondent, The Procter & Gamble Company, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

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By Mr. Royall:

Q. Mr. Trimpe, I believe you have testified before in this case as a witness called by the complainant; is that right? A. That is correct.

Q. How many distributors does the Clorox Company have in the United States? A. Eighty-three.

Q. Will you give, briefly, the contact which you as the

(Tr. p. 4201)

head of the sales division have with your distributors? A. Well, I contact them personally, of course, and I have five division sales managers who are under my supervision, who in turn work very carefully with the distributors.

* * * * *

Q. They take the risk and the title, do they not? A. Yes, they take title.

Hearing Examiner Haycraft: When do they pay for it?

The Witness: We have a basis where we bill them after a two-week period and they pay us and they in turn bill the direct buyers who buy from them on approximately—

Hearing Examiner Haycraft: They don't wait until they sell it before they pay you? They pay you on your billing?

The Witness: That's right. On a periodic two-week basis.

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(Tr. p. 4204)

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Hearing Examiner Haycraft: You don't have to put every broker on. We can assume that they are a class, that brokers are all about the same.

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(Tr. p. 4206)

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By Mr. Royall:

Q. State whether or not you from time to time consult with the brokers and give them guidance and advice? A. I travel extensively. This is my responsibility as Vice President of Sales. In traveling I go into their offices and discuss our business with them and consult with them in regard to our business in their territory.

Q. Do you give them suggestions and advice? A. Yes.

Q. Do each of these distributors have their own retail force? A. Yes.

Q. That is, retail sales force? A. Yes.

Q. Do you know what these salesmen do? A. Yes.

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(Tr. p. 4207)

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Q. Does Clorox Company have any direct salesmen? A. No.

Q. Is Clorox sold to the retail trade in any other way than by the salesmen of the distributors? A. No.

Q. Do you keep in touch with the method of sales used by the brokers? A. Yes, through my division sales managers and by my personal contacts.

Q. In the ordinary course of business, do you receive reports as to the activity of these salesmen? A. Yes. Each distributor reports to me on a weekly basis.

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(Tr. p. 4211)

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Q. Mr. Trimpe, do you travel with the salesmen from time to time? A. Yes, 50 percent of the time.

Q. Do you observe the activities that they undertake? A. Yes.

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(Tr. p. 4216)

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Q. Specifically, Mr. Trimpe, what do you do, what activities do you have in connection with these salesmen of the brokers? A. Well, I personally contact them.

Hearing Examiner Haycraft: How many are there?

The Witness: Counting wholesale salesmen and chain store salesmen there are around 749 to 750. That is the last figure I have in my mind as of about November 1st.

Hearing Examiner Haycraft: And you contacted all of them?

The Witness: You mean personally?

(Tr. p. 4217)

Hearing Examiner Haycraft: Yes.

The Witness: Well, I have worked in the past three years, off and on, with practically all of them in the sense of having meetings with them and travelling the trade with them as much as I could. Obviously I couldn't per-

sonally have worked with everyone of them, no. But I have made it a point, since I have just been with the company three years—a little over—not only to work with the wholesale chainmen in meetings as I said, but I have made it a point primarily to work with the retail salesmen in every territory in which I could.

Hearing Examiner Haycraft: Do you address those meetings?

The Witness: Yes.

Hearing Examiner Haycraft: And they sit out and listen to you? Is that what you mean by contacting them?

The Witness: I do that, and after the meeting is over, after we have talked over our problems, I get out and get in the car with them and ride in their territories, go into retail stores and point out what I believe are problems, if we have any, and try to talk to them about how we would like to correct them. I work with the retail men in every territory.

I make a particular point of working with retail men in every territory in which I travel.

(Tr. p. 4218)

Hearing Examiner Haycraft: And you travel all territories?

The Witness: In the last three and a half years, I have been in every territory except two.

Hearing Examiner Haycraft: That is over a three-year period of time.

The Witness: Yes.

Hearing Examiner Haycraft: How many times have you been in each territory?

The Witness: It is according to the size of the territory. With some territories I get in there three or four times a year. In others I have been only once.

Hearing Examiner Haycraft: And some not at all?

The Witness: And two not at all. Then, of course, I have division sales managers with whom I——

Hearing Examiner Haycraft: How many individual salesmen do you accompany in retail trade on more than one call?

The Witness: Do you mean more than one day with him?

Hearing Examiner Haycraft: Yes.

The Witness: In general I would have ridden with a retail man only once. But as I said, in the larger territories, the more important territories to us volume-wise, and in the points closer to my home office, I have ridden two or

(Tr. p. 4219)

three times with the same man.

Hearing Examiner Haycraft: In San Francisco?

The Witness: Yes. But in general I have ridden at least once with practically all of our important distributors, with every man, and a couple or three times with some of the retail men in some of the territories.

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(Tr. p. 4220)

By Mr. Royall:

Q. How much of your time do you stay in the field? A. Well, I have testified that the first year with the Company I was in the field primarily all the time. I was only home a few weeks out of the year. And the next year I was able to get a division sales manager in the East, and then in the Chicago area, and now we have five division sales managers. So it relieves the burden of travelling. But I am in the field, I would say, 40 percent of the time to 50 percent of the time.

Q. As a regular part of your business, do you get reports from these sales managers in places where you have not yourself personally seen the salesmen?

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(Tr. p. 4221)

A. Yes, each division sales manager reports to me on a weekly basis not only where he is going to be in the next week——

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By Mr. Royall:

Q. Had you finished? A. No. The division men report where they are going to be, in which territory they are going to work, and in which territory they have worked, and they cover the details of the work during the past week.

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(Tr. p. 4226)

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Q. During the brief testimony on this case—and I don't believe there will be any dispute with the other counsel on this—it has been stated that at the time of the acquisition, Mr. Roth, Mr. Feigenbaum, and Mr. Wolford, had retired or ceased to take an active part in the operation. Were there other executives in the old Clorox in a similar situation?

Mr. Royall: I want the complete facts, your Honor.

A. Mr. Larry Barton, who is our Vice President of Production, and also was in charge of technical research for the Company, retired in 1956.

By Mr. Royall:

Q. He had reached the retirement age? A. Yes.

Q. Now, another subject.

Mr. Trimpe, do you know the number of bleach manufacturers in the United States? A. I know many of them personally, and through the normal course of my operation in my department, I have records which we have accumulated over many years and which we constantly check, which gives me, I think, knowledge of the bleach manufacturers of America.

Q. About how many are there, to your knowledge?

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(Tr. p. 4227)

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Hearing Examiner Haycraft: Is there any direct or recognized source of information?

The Witness: There is not an association of bleach manufacturers but we periodically send a sort of a letter to our distributors asking them—we have a master list, and we send that to our distributors asking them to correct it, alter it, add to it or change it so that we are aware of who the competitors are throughout the United States.

By Mr. Royall:

Q. Is it necessary in the operation of your business to know the names of your competitors and their location? A. I believe it is.

Q. And as a part of your regular business, do you keep as up to date on that as you possibly can from your reports and from your observations? A. Yes. I have a girl who constantly works on that list as it is necessary to alter it or change it.

Q. Approximately how m ny are there of liquid bleach producers?

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(Tr. p. 4228)

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A. According to my records, which I have just brought up to date, there are over 240 bleach manufacturers in America.

By Mr. Royall:

Q. Have you prepared from your records and your personal knowledge a list of them in the United States? A. Yes, I have done that recently.

Mr. Royall: I would like to have this marked for identification as Respondent's Exhibit 67-A through -Q.

(The document referred to was marked Respondent's Exhibit 67-A through -Q, for identification.)

By Mr. Royall:

Q. Mr. Trimpe, I hand you Respondent's Exhibit 67-A through -Q for identification. Is that an accurate list of the liquid bleach manufacturers in the United States at least to the extent that each one of those is a manufacturer? A. Based on my personal knowledge and from my records, that is an accurate list.

Q. Are you familiar with the brands under which they are manufactured? A. Yes.

Q. Is that shown on the list? A. The bleach brand is shown on the list.

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(Tr. p. 4230)

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Q. And that is the time when the list was finally prepared? A. Yes.

Q. When was that? A. About two weeks ago. This is a little bit before November 1.

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(Tr. p. 4238)

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Q. Since 1952 has Clorox bleach been the largest selling bleach, household liquid bleach? A. Yes.

Q. In the country? A. Yes, sir.

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(Tr. p. 4243)

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Q. Mr. Trimpe, do some manufacturers manufacture liquid household bleach for distribution under private labels? A. Yes.

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(Tr. p. 4246)

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Q. Have you, through your distributors and your sales managers obtained labels which now appear on private label bleaches? A. Yes.

Mr. Royall: May this be marked for identification?

(The document referred to was marked Respondent's Exhibit 68, for identification.)

By Mr. Royall:

Q. I hand you what has been marked Respondent's Exhibit 68, consisting of 50 pages. Tell me what it is. A. This represents an attempt on my part to fully be aware of all the private labels in America. The best way I knew to do that was to, again, through my distributors and my division sales managers, ask them to not only give me a list of all the private labels in their territory, which I have compiled in total alphabetically and also broken down into separate lists by distributors so I will know how many were in each distributor's territory, and also by the manu-

facturer, where we could get that information, and also when the private label started in the territory.

(Tr. p. 4247)

In order to be able to study these private labels from my point of view not only as to what they look like but what they have on their recommendations in terms of caution and how to use the product, and so forth, we had sent in—we had them go out and buy a quart bottle, just one size, and send in to us the private labels throughout the United States, of which there are about 204, according to my records before I went on my trip two weeks ago.

Q. You do not know for certain whether that is all of them, do you? A. No, sir; I don't know that that is all.

Q. But you have that many? A. I consider this a very significant development, and have thought so, as I am on record and in previous testimony, and I think it is a tremendously significant thing. We have as much statistical information as well as this information as we possibly can to try to find out the spread of it, how fast it is spreading, and in what size markets and how important those markets are to our business.

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(Tr. p. 4248)

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VOIR DIRE EXAMINATION

By Mr. Tincher:

Q. Respondent's Exhibit 68 was prepared especially for presentation by you at this hearing, was it not? A. May I say this, Mr. Tincher: As I am on record, I have been accumulating this information for a long time. And in preparation for coming to testify, the General asked

me again if I had records which I considered to be complete. In order to make them complete I have instituted a special project in the last three months to get as accurate and final information as I could about private label bleaches, yes.

Q. The General is Mr. Royall?

(Tr. p. 4249)

A. Mr. Royall, yes.

Q. Let me ask you, sir: What use is made of that exhibit other than have it here to be offered at this hearing? A. Well, if we get it back some day—in the meantime, while these labels came in, I have a girl who has compiled this information for me, and the lists that were compiled.

Mr. Tincher, first of all, from a legal point of view many of these private labels initially came out with labels that looked an awful lot like the Clorox Company label.

May I cite an instance or is that not necessary?

In any event, when these labels came in we made it absolutely clear to some of these people that they were to discontinue the violation of certain trade mark positions that we have. For example, in the use of the Diamond or the actual color, and so forth. That is the first thing we do. We sent this to our lawyer, Mr. Feigenbaum, where we thought there were violations.

Q. That is the Clorox Chemical Company? A. No, the Clorox Company, too.

Q. Both of them? A. Yes. I have been studying this thing for a long time. That is the first thing.

Secondly, we are very much interested in the claims made by our competitors. And in many instances we are very much interested when, for example, we have a copyright,

(Tr. p. 4250)

I mean a patent, on a special process for Nylon and Rayon which has been granted to us. The use of Clorox on Nylon and Rayon. That has been granted in the last few months.

Now, when we came out two and a half years ago with a statement on our label that you could use Clorox on Nylon and Rayon, practically everybody in the industry put that on their label.

Another thing we wanted to check out is just how many of these people who are manufacturing private label made reference to the use of their product on Nylon and Rayon.

The third reason we wanted to analyze these is that we wanted to compare the quantities recommended in the wash with the quantities that we recommend, and in many instances we have had, where these are important outlets, big chains, we have a continuing sample sent to our attention at Oakland of the major private labels, and we compare their product with our products to compare the relative efficiency, and we use the recommendation on the samples on the washing machines at the Oakland plant to compare the value to the consumer, based on the prices charged.

Those are three instances.

More important to my point of view, one is the legal thing, important to me sales-wise.

Another is a technological thing which we supply our technological people with.

(Tr. p. 4251)

A third thing is on the basis of our patent claims on the use of Clorox on Nylon and Rayon.

Finally, from a sales point of view, I just think I would not be a very intelligent or strong-minded sales manager if I didn't know what was happening to competitive trends in the industry. So from my point of view I want to

know how many private labels there are, where they are, who is putting them out, how much they sell, and so forth; as much as I can get the information.

Q. That has been true ever since you came with Clorox? A. That has been true ever since three or four months, to shake down. But when I began to recognize this thing and proceeded to travel I instituted proceedings to bring this to my attention.

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(Tr. p. 4253)

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DIRECT EXAMINATION

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(Tr. p. 4254)

Mr. Royall: I would like to have this marked for identification as Respondent's Exhibit 69-A through -Z.

(The document referred to was marked Respondent's Exhibit 69-A through -Z, for identification.)

Hearing Examiner Haycraft: What is it entitled?

Mr. Royall: This is an alphabetical list of names by brands. It carries the purchasing chain or market, and it carries the name of the—the area, the name of the area in which it is sold. And it carries the name of the manufacturer written in pen wherever the name of the manufacturer was known. It is left blank otherwise.

I might say in connection with this, we have another one which shows them in the distributor areas, our distributor areas, which we may or may not offer. We would be glad to offer it.

By Mr. Royall:

Q. Mr. Trimpe, is this exhibit, Respondent's Exhibit 69-A to -Z, the paper you referred to that was prepared under your supervision in your office? A. Yes. This

represents a reflection again of my personal knowledge of private label brands and/or reports received from my division men, and/or the distributors, which is correlated with those labels, and we attempted to get the name of the chain or other outlet selling this, how many stores they had, where they were located, the name of the

(Tr. p. 4255)

brand, and the name of the manufacturer where possible, and where possible the date at which that private label brand was introduced or first announced by that store, or series of stores.

Q. Is this exhibit a summary of that information as to private label brands to the extent that you have it? A. This is a summary to the best of my knowledge.

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(Tr. p. 4256)

VOIR DIRE EXAMINATION

By Mr. Tincher:

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(Tr. p. 4258)

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Q. Has any effort been made to see—when you say a chain letter, does this exhibit mean it is sold in every store in that chain, just some of them or can you tell from the exhibit? A. When a chain announces a private label they normally force distribution, Mr. Tincher.

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(Tr. p. 4259)

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Q. What do you mean by chains force? A. There is a rule with most major chain stores in America that they have what they call forced items for distribution, and

others that are at the election of the store manager.

When they say forced distribution it means that every store in the outlet must carry the items on the forced list. Normally each order book that the store manager uses to order his weekly needs has an indication on there, whether it is a forced item or whether it is at his election on the basis of the volume in his store or may be the territory in which his store is located, since they say chain stores flare out in many areas. If it is a forced item, it is in the store.

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(Tr. p. 4264)

Mr. Tincher: Not strike, but I am moving against admission of the document.

Hearing Examiner Haycraft: Objection overruled. The document will be received in evidence as RX-69-A to Z.

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(Tr. p. 4265)

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DIRECT EXAMINATION (Resumed)

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(Tr. p. 4267)

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Mr. Tincher: Mr. Examiner, I thought you ruled that we were going to have private brand information from the producers of it?

Mr. Royall: I am asking him merely to define the term, that is all.

Hearing Examiner Haycraft: But you are asking him to define a term in another area of the industry.

Mr. Royall: No, sir.

Hearing Examiner Haycraft: Counsel in support of

(Tr. p. 4268)

the complaint asked a question and elicited a long answer. This goes along the same line. I am very frankly not

going to make any finding on it, coming from somebody who is not in that particular area. This witness is not a wholesaler. This matter of control brands is a pretty touchy one. There is some difference of opinion as to what it really constitutes.

Also, the testimony of this witness as to force brands, forced by the chain stores, I can make no finding on that coming from his testimony. There are such things perhaps but I would like to have the testimony from people who are actually in that business. It is hearsay from this witness in both those categories.

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(Tr. p. 4300)

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Q. Mr. Trimpe, do you know where, prior to the acquisition of Clorox by Procter & Gamble, Texize was sold, in what territory?

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The Witness: Textize primarily is sold in the area around Greenville, South Carolina, and in North Carolina. Their plant is located in Greenville.

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(Tr. p. 4313)

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Hearing Examiner Haycraft: I would like to find out just what it is that you are trying to bring out here. What has the three-quart bottle got to do with it?

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(Tr. p. 4314)

Mr. Royall: The three-quart bottle or any other promotional thing like that, this Erie——

Hearing Examiner Haycraft: Let's go into the Erie situation.

Mr. Royall: You freely let them testify to what we did in Erie.

Your ruling is that they can testify what——

Hearing Examiner Haycraft: If you start asking questions about what they did in Erie, I will listen to you, because that has already been injected as a competitive situation.

Mr. Royall: Under your ruling we couldn't ask what they did in Erie.

Hearing Examiner Haycraft: I will rule as the questions come up. I am not going to pass on what I might have ruled or would have ruled or what have you. In this case certain instances have been testified about by witnesses called in support of the complaint. And I remember Erie, Pennsylvania. If you want to ask this witness to tell his story about the situation in Erie, Pennsylvania, and what happened there, you may go ahead and do it. The foundation has been laid, and you are entitled to testify whatever you did there because there has been an attack made on you there.

But you are going out here now cold and putting up some things that I don't know anything about and have no

(Tr. p. 4315)

relevancy as far as I can see to the issues in this case.

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(Tr. p. 4320)

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By Mr. Royall:

Q. Mr. Trimpe, have you prepared a chart showing the various advertising and promotional moneys used by your principal competitors in the bleach industry in the last several years? A. I have.

Q. What is the source of the information which you have included in the chart? A. Basically, my personal observation, in some instances, through division men, and again from reports from my distributors either by letter, by telephone, by wire, or weekly reports.

Q. Do you keep a regular running sort of diary of those, over the years? A. Yes.

Q. What is the purpose of that? A. I think it is my responsibility as Vice President of Sales to know within every power I have to know what my

(Tr. p. 4321)

competitors are doing.

Q. Is that a part of your job as sales manager? A. I consider it as such.

Q. Are these reports made to you in the regular course of business? A. Yes.

Q. And are they relied on by you in mapping out your activities in the sales department? A. Yes.

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Mr. Royall: I would like this marked for identification, please.

(Tr. p. 4322)

(The document referred to was marked Respondent's Exhibit 71-A through -N, for identification.)

By Mr. Royall:

Q. Mr. Trimpe, does this chart show the activities over the period set forth therein, of your competitors, Respondent's Exhibit 71-A to -N? A. To the best of my knowledge.

Q. Is it as complete as you have been able to get? A. Yes.

Q. There possibly may be promotions not included? A. Yes, sir.

Q. But as far as this exhibit is concerned, this includes all that you know of, of your competitors? A. Right.

Q. Does the chart show the date of the report made to you? A. Yes, it does.

Q. And each instance? A. Yes, sir.

Q. Are those reports available for inspection? A. Yes.

Q. That is, the original reports from the field? A. Yes.

Q. To you? A. Yes.

Mr. Royall: Your Honor, we offer it in evidence.

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(Tr. p. 4324)

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Hearing Examiner Haycraft: I don't see that there is any relevancy or probative value to it at all. Objection sustained.

Mr. Royall: This can be our tender, your Honor?

Hearing Examiner Haycraft: Yes.

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(Tr. p. 4336)

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Room 332
Federal Trade Commission
Washington, D. C.

Thursday, 20 November 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 4337)

PROCEEDINGS

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Bernard F. Trimpe

resumed the stand as a witness for the Respondent, and having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (resumed)

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(Tr. p. 4338)

By Mr. Royall:

Q. Mr. Trimpe, since you joined the Clorox Company and since your period of service from that date with the Clorox Company, have you had any occasion to replace any of your distributors? A. Yes.

Q. How many? A. Around a half dozen.

Q. Have you had occasion to replace any recently? A. Last year we replaced one.

Q. The six, approximately, you referred is since you came there in 1955? A. Yes, sir.

Q. Before you make arrangements or appoint a distributor, do you make an investigation of him? A. Yes, we do.

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(Tr. p. 4342)

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Q. Mr. Trimpe, what factors do you consider in selecting and appointing distributors? A. We go into quite a great deal of detail. We consider for the particular market——

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The Witness: We go into a particular market and we first of all make a list of all available brokerage firms, we analyze the principals that they represent, we investigate the number of wholesale and chain salesmen as well as retail salesmen that they have. We get a Dun & Bradstreet report on their financial ability. Through our advertising agency we make a survey of the direct buyers; in other words, the

(Tr. p. 4343)

wholesalers and chains in the market in regard to their opinion of the various brokers as a competent and efficient sales organization.

Then, after we get all this information, we eliminate those that we feel do not fit our needs. We hold personal interviews with these people at a specified time, giving due consideration to all the factors that we feel are important in representing us in the market.

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(Tr. p. 4345)

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Q. Mr. Trimpe, these factors which you stated with respect to the distributors who have come since you have been there, are they also factors in whether you will retain a distributor whether he came during your term or before? A. Yes. In travelling around and working with these distributors, of course, I made my own analyses of them. The principal function in all of these investigations as well as

(Tr. p. 4346)

retaining the distributor is the amount of effort or, in other words, the value of our account in his organization.

Q. Would the lack of some of the qualities and apparent lack of some of the qualities you outlined result in the distributor not being retained? A. Yes.

Q. Are there any additional factors relating to the—— I don't think you stated this—relating to what their relative interest in Clorox as compared with the other products? A. Yes.

* * * * *

The Witness: One of the things we investigate very carefully, and we require in this investigation, is a statement from the distributor or broker as to the relative value of his accounts. The reason we do that is this: We primarily look for certain types of brokers, specialty type brokers, and in that process we, in evaluating the other principals they represent, can then decide how much time and energy they would put on the Clorox account if and when we appointed them.

By Mr. Royall:

Q. Would or would not the importance of the Clorox account

(Tr. p. 4347)

to the particular broker be an element to consider? A. Very greatly.

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(Tr. p. 4349)

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Q. Mr. Trimpe, in connection with your testimony yesterday, you spoke of a weekly activity report which you required of every distributor. Do you have a regular printed form of that for weekly use? A. Yes.

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(Tr. p. 4353)

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Q. By means of these reports and as a result of your personal contacts, correspondence, and telephone conversations, and reports from your division salesmen, all of which you mentioned yesterday, do you know what duties your distributors and their salesmen perform in addition to that of soliciting and taking orders?

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(Tr. p. 4355)

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A. Yes, I know the duties. I know them personally, working with the people.

By Mr. Royall:

Q. Tell what the duties are, what they do. A. These salesmen have a specific route that they cover in every territory. They go into the store and they sell Clorox. They check the shelf——

Hearing Examiner Haycraft: Is Clorox the only thing they are selling?

The Witness: No, sir; they sell three or four other items.

Hearing Examiner Haycraft: How many?

The Witness: At the most, they try to concentrate on three or four items on a call.

Hearing Examiner Haycraft: Do you mean by that, that they only have three or four other items to sell?

The Witness: Oh, no, no; I do not mean that at all.

(Tr. p. 4356)

Our distributors represent as few as five or six principals and some of them represent as many as 25 or 30 or more than that, even, some of whom they give sales service to, and some of whom they do not.

But when they go into a store they check shelf stock of Clorox, they check the back room inventory, they check the labels on the shelf, they check for out-of-stock by sizes, they contact the store manager and try to sell him on a new size, if that is a problem in that store, in conjunction with or without our promotions they ask for displays and try to sell a display, and if they get it, in many instances, they build the display.

Hearing Examiner Haycraft: Which of those things have you told about here would not be ordinarily done by a salesman?

The Witness: Well, I think, your Honor, with a great deal of respect for your thought yesterday, this gets back into your basic philosophy of what a sales force should do. To my thinking, why I feel the way I do about these salesmen making a better call, I honestly believe that a man's service function that he performs as well as his selling function is very vital.

There are other companies who feel that your primary function is to do a selling job only and rely on the employees of the store once a decision has been made to,

(Tr. p. 4357)

for example, build the display, or to just call attention to out-of-stock to the stock boy and not carry out the merchandise from the back room. Many companies don't even want you to go in the back room and check stocks.

Hearing Examiner Haycraft: They won't let you?

The Witness: In some instances, of course, the Union won't allow you to. We run into that problem, too. Not generally.

Hearing Examiner Haycraft: I may be usurping somebody else's function but as long as I raised this myself yesterday, I am trying to find out from this witness which

of these various things that he says this salesman does is not the ordinary thing that is expected of a salesman, whether he is working for a broker or for a manufacturer.

By Mr. Royall:

Q. Answer that question. A. I thought I was answering it, as to the specific duties. I think the service function, your Honor, primarily.

Hearing Examiner Haycraft: You would be surprised. And I am surprised at you saying that. Because I don't know of a single manufaeturer's salesman who doesn't perform service along that line.

The Witness: But I don't think to the extent that we require our people.

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(Tr. p. 4358)

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Q. These various things that are done by the distributor's salesmen, Mr. Trimpe, are they some of the things that you require and ask for them to do and check on? A. Absolutely.

Mr. Tincher: Mr. Examiner, I am sincerely not trying to be obnoxious but we keep using this word "require" and we established yesterday that these——

Hearing Examiner Haycraft: We haven't established, yesterday. It is being very much dis-established. So don't worry about that. Objection overruled.

I will say this, Mr. Tincher, for your information,

(Tr. p. 4359)

based upon that report that you have there: I am going to have to be compelled to treat these distributors as if they

were employees, because they do get from them the same type of thing they would get from their sales force.

By Mr. Royall:

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(Tr. p. 4362)

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Q. The question is do you think selling through distributors is better for Clorox and selling through direct salesmen, and I will add why is it better if it is?

Hearing Examiner Haycraft: By direct salesmen do you have in mind Procter and Gamble?

Mr. Royall: Of the type Procter and Gamble uses.

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(Tr. p. 4363)

A. Yes, I think we are much better off——

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By Mr. Royall:

Q. Will you answer? A. We are much better off to be represented by brokers in the field than through direct salesmen.

Q. Why? A. There are many elements in this.

I think the first and most important element in my decision is the fact that our broker sales force for the most part have represented our company for 20 to 25 or 30 years. They have a prestige in the market, they have employees who in turn have been under their supervision or have been hired by them for great periods of time and it is my sincere belief that a salesman does his job not only by following certain selling practices, but by the prestige that he has with the accounts on whom he calls. A direct sales force for the most part is built primarily around the growth potential of the salesman. That is, as the man does

a good job in a certain territory he normally is given an opportunity

(Tr. p. 4364)

to move into another territory and show how he can handle himself in that situation.

So that they are not able to stay in a territory for any great period of time.

I am not quoting just myself, but at the National Food Brokers' Convention——

Q. I don't think you should quote anybody. A. All right. I feel very strongly about that. I feel that our brokers have an excellent prestige in the market. They are accepted. And in many cases they can obtain feature in display, and they can get cooperation that a direct sales force can not because it is subject to a lot of——

Hearing Examiner Haycraft: I would like to interrupt for a moment.

Is it your testimony and your belief that the Clorox prestige is greater than Procter and Gamble prestige?

Mr. Royall: Do you mean of the companies?

Hearing Examiner Haycraft: Yes.

The Witness: Of the companies?

Hearing Examiner Haycraft: He talked about the prestige of Clorox. Is it your testimony and your belief that the Clorox prestige is greater than Procter and Gamble prestige in the market where they sell?

The Witness: I have no reservation in the world. I feel very strongly, and the answer is yes, the prestige of

(Tr. p. 4365)

the Clorox Company is greater.

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(Tr. p. 4366)

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Q. Mr. Trimpe, in formulating your sales policies for Clorox, do you need certain information as to what is going on? A. Yes.

Q. What are your principal sources of information besides your personal contacts? A. Through my divisional sales managers?

Q. Yes. A. Other sources I have indicated, through the distributors.

Q. Do you or do you not rely in large part on this information concerning the bleach market and its competitive factors? A. I rely on it.

Q. Can you tell me some of the general types of information that you obtain and rely on? A. Pricing information, promotions, advertising, the competitive area of sale, for example.

Q. Do you mean competitive of you or of your competitors? A. Competitors. What is happening in terms of their expansion.

Hearing Examiner Haycraft: Just what use do you make of information of competitors' expansion?

The Witness: Well, for example, in Erie, Pennsylvania, we had word that one of our competitors was expanding

(Tr. p. 4367)

to a new area. I think we have some of the information I received in the form of telegrams and letters in the record. We acted very quickly on that one.

By Mr. Royall:

Q. Do you get any information on changes in the selling territories of your competitors? A. Yes.

Q. Do you get any information about their advertising and promotions? A. I do.

Q. And do you get any information in the case of new plants or changes of location of plants of your competitors? A. Yes.

Hearing Examiner Haycraft: What do you make of that?

Mr. Royall: I was going to ask him that next, your Honor.

The Witness: For example, if we know that a competitor is building a new plant, we normally ask our distributor to go down and investigate it, take pictures of it, send them to us, and when it is completed we have pictures of the completed plant. We have some idea then of the——

Hearing Examiner Haycraft: What do you do with that? What do you do with it as a matter of policy?

(Tr. p. 4368)

The Witness: We know the industry well enough to know that the plant is in there and it will enable them to expand their shipping area.

Hearing Examiner Haycraft: You still don't tell me what you do in connection with your policy because somebody else is building a plant.

The Witness: We take this information and we do everything we can then to step up our combative effort in terms of increased effort at the retail level through our distributor in that area for the first thing. If they—for example, at the time of the opening of the plant—have an introductory deal of the product, then we consider whether or not we want to meet that.

Hearing Examiner Haycraft: That is an introductory deal. I can see that. But I can not, for the life of me, see how the erection of a plant in and of itself would have any effect on your policy.

The Witness: We know that this is the basis for an expanding market area, and therefore another new competitor in the area.

Hearing Examiner Haycraft: That is a matter of information. But do you ever change your price or change your policy or method of distribution because a competitor has built a plant?

The Witness: We do not change our price, nor do

(Tr. p. 4369)

we change our method of distribution.

Hearing Examiner Haycraft: In other words, you wait until some overt act is performed by them before you move?

The Witness: No, I don't wait until some act is performed by them. I make it very clear immediately to the distributor in that territory, and normally I go out there or we have a discussion or we do it by telephone or my division man goes there. "All right, here is a new competitive situation. The best defense is an offense, so let's get on the ball with the retail men and do everything we possibly can to make our competitive situation as strong as possible." That involves many things at the retail level.

By Mr. Royall:

Q. In this category of information on which you rely, is or is not the entry of new brands and manufacturers in the business important to you? A. Vitally.

Q. The Examiner has asked you in general what you do when you find new developments. Is the picture sometimes reversed and you have new developments yourself? A. Yes.

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Bernard F. Trimpe—Direct

(Tr. p. 4370)

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Q. Do you know, Mr. Trimpe—and don't answer this question because there will probably be an objection to it—do you know whether in the general business of manufacturing and selling food products it is usually and customary for one competitor to take notice of and seek to meet the competitive activities of another?

Mr. Tincher: I object.

Hearing Examiner Haycraft: I will take official notice of that. Go on. That is human behavior.

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(Tr. p. 4373)

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By Mr. Royall:

Q. Mr. Trimpe, there is testimony in the record at Pages 2867-9 and 2897 to the effect that——

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Q. Relating to a price of $2.01 per case of quarts in Buffalo as against a price of $1.91 in adjoining territory for Clorox—can you give us the story on this? A. We ran a test in Buffalo and Atlanta, as well.

Q. There was one in Atlanta, too?

(Tr. p. 4374)

A. Yes, sir.

We put a handle on a quart bottle and had to increase the price in order to offset the increased cost for the handle, which was in turn reflected by the trade at a higher price at the retail level.

Q. What was it? One cent a quart? A. One cent a quart. As a result of that test over a six-months period we found our business declining in both markets, and we

withdrew the test and reduced the price back down to $1.91.

Hearing Examiner Haycraft: You continued to sell the bottles with the handle on?

The Witness: No. We decided that it wasn't a wise decision to try to increase the price. We felt the consumer wouldn't pay the extra price for a handle on a quart bottle, at least at this time.

By Mr. Royall:

Q. Mr. Trimpe, this calls for a Yes or No answer because the Court doesn't want to get into a lot of other details: Have you had recent experience where there was a difference in the gap between your price and the price of another bleach where the market was similarly affected? A. Yes.

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(Tr. p. 4376)

Hearing Examiner Haycraft: You can ask him if it is his understanding that Hilex is sold at the same price as his.

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By Mr. Royall:

Q. Is it your understanding——

Hearing Examiner Haycraft: Is that to the retail trade or to the consumer?

Mr. Royall: To the grocery store.

Hearing Examiner Haycraft: Grocery store?

Mr. Royall: I guess that is what he knows.

Hearing Examiner Haycraft: Has that been reported to you?

The Witness: Yes, it has been reported.

Hearing Examiner Haycraft: That Hilex sells——

The Witness: They have either the same price or in some territories a higher price to chain wholesalers.

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(Tr. p. 4377)

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Q. Based on your own personal knowledge and reports that you get in the due course of business, where do you meet Hilex in the competition?

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(Tr. p. 4378)

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The Witness: Wisconsin, Nebraska, Colorado, North and South Dakota.

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(Tr. p. 4380)

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Q. In what competitive area do you meet Fleecy White, based on your knowledge and the information you receive in the regular course of business? A. Virginia, North and South Carolina, Arkansas, Louisiana, Texas, Chicago, Ohio——

Hearing Examiner Haycraft: Ohio or Iowa?

The Witness: Ohio. Illinois, Indiana.

Hearing Examiner Haycraft: Throughout all those states, or just portions of them?

The Witness: I have named primarily where they have good distribution.

Hearing Examiner Haycraft: You say throughout the State of Virginia, for example?

The Witness: Yes.

Hearing Examiner Haycraft: When you said Ohio, did you mean throughout the State of Ohio?

The Witness: This is just starting in the last

(Tr. p. 4381)

six or eight months and it is primarily in the central and eastern part, but it is spreading throughout the state very rapidly.

We started a year ago in Arkansas and Louisiana and it is spreading rapidly. In Texas it has been there for quite some time. Southern and Southwestern parts, particularly.

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Q. Mr. Trimpe, as to Texize, will you give us the same information as to where you meet them competitively, based on what you know and learn in the due course of your business? A. South Carolina, principally, and in the central section of Tennessee.

Q. When did you first get this information as to Tennessee?

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A. This past calendar year.

(Tr. p. 4382)

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Q. Where do you meet in competition on the same basis as I have asked the other question, where do you meet in competition Sani-Clor? A. California and Nevada.

Q. How long have you—— A. Overseas in the Philippines. But I guess that doesn't apply.

Q. What is that? A. It is just domestic United States? They are also overseas in the Philippines.

Q. We are not asking about overseas. A. California and Nevada.

Q. How long have you been meeting them in competition in Nevada? A. In the last year.

Q. There has been a considerable amount of testimony in the case of the Government about Erie, Pennsylvania.

Has anything else happened in Erie, Pennsylvania, based on your knowledge and the information you have received in the due course of business, has anything happened there in this year in the way of promotion? A. The Purex Company have come back with another "cents off" label in the last 30 days, and we have countered with a defensive measure of our own.

(Tr. p. 4383)

Q. What is that defensive measure? A. We ran a newspaper coupon.

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(Tr. p. 4384)

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Q. Mr. Trimpe, there was offered in evidence yesterday Respondent's Exhibit 71, which is entitled "Competitive Liquid Bleach Promotions." I want to ask you a little about the method of getting this information. Was that obtained largely from the type of report which you put in evidence this morning from your distributors? A. Yes.

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Q. And you have available, do you not, the distributors' reports upon which this was based? A. I have available the posting books we used as a basis for that report.

Q. What other books do you have that would support these

(Tr. p. 4385)

figures? A. I have the actual reports in my files.

Q. Actual reports of distributors? A. Yes.

Q. That is what you based this on? A. Yes.

Mr. Royall: Your Honor, I am going to re-offer that, and I am not going to argue at length. I am so confident

it is correct I want to tell you why I want it in, and why I think it should go in.

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(Tr. p. 4386)

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One of my associates suggested, and I think it is a good suggestion: We are not introducing this, your Honor, for the purpose of getting into a lot of brush fires on individual items. There is no intention to try to develop the details or prove the effect or indicate any facts or circumstances relating to it.

Hearing Examiner Haycraft: Don't you think counsel

(Tr. p. 4387)

in support of the complaint would do that for you? In other words, they would take it upon themselves to do a great deal of cross-examination and it will probably lay the foundation for rebuttal on that point. It really is not an issue.

Mr. Royall: The way I feel is this: For the limited purpose that we offer it, and we would limit its purpose for that, I don't think anything would be competent on either cross-examination or rebuttal except, did they have that type of promotion. We do not anticipate that they will be able to show a single error in this chart.

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Hearing Examiner Haycraft: Let me ask you, what sort of finding would you want me to make on that?

Mr. Royall: I want you to make a finding, the two that I intimated. The first was that the types of promotion which these gentlemen apparently inferentially are complaining of are promotions that other bleach companies

(Tr. p. 4388)

have used.

Hearing Examiner Haycraft: What would that tend to prove? In other words, where would that meet any of the issues in this case? As I understand it, their whole case is based on the size of Procter and Gamble, the amount of money that they are able to spend in advertising and promotion. And the mere fact that some of the smaller concerns in the industry have been trying, through the years, unsuccessfully, to meet the competition of Clorox with promotions and advertising to their limited financial ability certainly would not tend to disprove what Procter and Gamble might do with their power, their bigger advertising budget, and so on.

Mr. Royall: We are not liable in this action for what Clorox had previously done in promotion.

Hearing Examiner Haycraft: No, I grant you that.

All that you are responsible for, of course, is what Procter and Gamble is going to do in the future.

Mr. Royall: That's right.

Hearing Examiner Haycraft: Procter and Gamble may do a number of things in the future. We don't know.

Mr. Royall: They may.

Hearing Examiner Haycraft: We listened to their Trimpe this morning. They may be so sold on the situation that he has presented, that they may agree with him and leave him in charge of Clorox and say, "Go ahead."

(Tr. p. 4389)

On the other hand, they may say, "We think we can do a better job. We will put that under one of our divisions and put you at the head of that division perhaps but we will let Procter and Gamble salesmen carry this and they will go out and sell it."

Of course, Mr. Trimpe will be very unhappy about that.

But the power still resides there, that that is a decision Procter and Gamble can make. It hasn't made it yet but it may make it tomorrow. We don't know.

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(Tr. p. 4392)

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Mr. Tincher: We want it to be clearly shown that we are not contending that everybody in the industry except Clorox Chemical Company was using these promotions prior to the acquisition. We are making no inferences or statements that this type of—any type of promotion is new to the bleach industry. We put through our own witnesses what other people used prior to the acquisition.

The question is, what Clorox Chemical was doing and what the Clorox Company was doing.

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(Tr. p. 4393)

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By Mr. Royall:

Q. Mr. Trimpe, do you, in the operation of the Clorox sales, meet competition from private labels brands? A. I am not sure I understand how you mean.

Q. Are they competitive with you? A. Oh, yes.

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(Tr. p. 4395)

The Witness: I think they are very competitive for many reasons. First of all, we have from Nielsen the share of market enjoyed by private labels, broken down by divisions, and it is quite substantial to my mind.

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Hearing Examiner Haycraft: What do you mean by "substantial"?

The Witness: In some areas it amounts to as much as ten percent of the total bleach business. On a nationwide——

Hearing Examiner Haycraft: How much of that business do you enjoy?

The Witness: In the same areas, forty to fifty percent, or more. It varies of course by the market.

Another way in which they are competitive is, for example, if a particular chain does not have a private label bleach and then brings it in to the stores, they normally do not expand the shelf section and we lose shelf position.

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Hearing Examiner Haycraft:

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Go ahead.

The Witness: Another instance, they feature, give

(Tr. p. 4396)

special displays and attention to it, and these are all competitive factors as far as I am concerned.

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By Mr. Royall:

Q. Mr. Trimpe, has the number of such private brands increased since 1955?

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A. In my opinion, yes.

By Mr. Royall:

Q. Have there been new private brands since the acquisition? A. Yes.

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(Tr. p. 4407).

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By Mr. Royall:

Q. What was the situation as to advertising and promotions when you came with the company in 1955?

(Tr. p. 4408)

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The Witness: In 1955, when I came with the company, the Clorox Chemical Company was using newspapers on a national basis, and magazines, primarily.

By Mr. Royall:

Q. What type of promotion was used? A. They were not using the factory allowances they had used before but were limiting it to strictly national advertising. But when I came——

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Q. What promotion did they have?

Hearing Examiner Haycraft: Do you mean as distinguished from advertising?

Mr. Royall: I intended a different thing, your Honor.

The Witness: It could be any number of things. A factory allowance would be a promotional effort, or a promotion like "spring house cleaning" promotion, to get special emphasis on the product.

(Tr. p. 4409)

By Mr. Royall:

Q. Was there much promotional activity at that time?

Hearing Examiner Haycraft: Was there any?

The Witness: Not that I know of, no, not at that time.

By Mr. Royall:

Q. Shortly after you came with the organization, was there any change in policy? A. Yes. I was fortunate

because the company had conducted some research and we were able to institute a promotion called the "nylon-rayon campaign." This was significant to our position primarily because we were able to announce through newspaper advertising, through merchandising pieces at the retail level, and on our label the fact that you could use Clorox on these synthetic fabrics. That was very significant. So we built an entire campaign around it and announced it right after I came with the company.

Then, later on, because that had been successful, and I wanted to extend the selling period, we had a fall promotion and it was successful so we followed that with a spring promotion.

Q. That was the spring and fall promotions. They started in what year? A. In 1956.

Q. In the spring?

(Tr. p. 4410)

A. The fall promotion, I believe, the first one was in 1956, and the spring promotion in 1957.

Q. When did the "nylon-rayon" campaign start? A. I believe that was in early 1956. The spring of 1956. I know it was.

Q. While they were going on, was there any policy change as to the development or experimentation or consideration of other forms of promotion? A. We were giving a lot of consideration to television and we finally——

Q. Let's stay on promotion first. I will withdraw that question.

During the time that these promotions started in 1956, beginning in the spring, what about the advertising that was going on? A. It remained basically the same.

Q. And was there a diversion of funds from the budget

to promotion? A. Some slight diversion in order to pay the expenses of the promotion.

Q. While those were going on, was there any further study of promotions in 1956 and 1957? A. As I indicated, the nylon-rayon campaign had been successful so we expanded into the fall promotion and the following spring into the spring promotion.

(Tr. p. 4411)

As I started to say, we were giving consideration to changing some of our immediate area expenditures into TV or TV spots. That is another thing we were looking at. And we were doing that by reducing the amount of money that we—or the number of newspapers that we used, primarily, or the frequency of the schedule.

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(Tr. p. 4412)

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Q. What other promotions followed that? A. I think we essentially built our whole advertising and promotional campaign during '55 and '56 and '57, around those, although I think I have testified previously we were entering Canada, had a special promotion up there where we used a different type.

Q. Different types? A. Yes.

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Q. Were you at that time considering and experimenting with other promotions? A. Yes, we were giving the fullest consideration to—as I learned more about the industry and what the industry was using and how they were promoting and merchandising, obviously I came back to my office from the field and

(Tr. p. 4413)

worked with the agency on any possibility that we could use to promote our product.

Q. With whom did you confer? Who was really your adviser at that time on advertising promotion? A. Mr. Eric Bellingall, and he is the account executive of the agency.

Q. What agency is he with? A. Honig-Cooper.

Q. He was in that position before you came to the Company? A. Yes.

Q. Was he the adviser to the Company on advertising and promotion? A. He is the account executive, yes; adviser.

Q. Who were the persons, aside from yourself, who worked on this, who started these promotions and studied them from the time you came until the time of the acquisition? A. Well, they included—I think I am the person principally who instituted the idea of getting into promotional effort. On the other hand, certainly Mr. Bellingal and I conferred many, many times.

Q. You say you started that. That was after you first came there; is that right? A. That is correct.

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(Tr. p. 4414)

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Q. Continuing from that time forward, I believe you testified you have made such promotions as you thought were in the interests of the Company; is that right? A. That is correct.

Q. And has that continued down to the date of your testimony here today? A. Yes.

Mr. Royall: Your Honor, this is following a question that was asked by the complainant witnesses at one of the hearings.

By Mr. Royall:

Q. Have you at any time received any instructions, advice or suggestions that you should delay or hold up or forego any promotional activity which you had planned as being in the best interests of the Company? A. No.

(Tr. p. 4415)

Q. Has anything connected with this litigation altered your plans?

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A. No. I think the record speaks for itself.

By Mr. Royall:

Q. You mean what by that? A. Well, I think I have been and the people with me have been very aggressive, as aggressive as we possibly can be, to try to maintain our share.

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Hearing Examiner Haycraft: What is your share?

The Witness: The share is based on what the Nielsen information figures indicate to me.

Hearing Examiner Haycraft: Do you think you are entitled to it?

The Witness: As a sales manager, it is my responsibility to keep it there.

By Mr. Royall:

Q. Mr. Trimpe, the type of promotions which you have been engaged in, we will say now or since the acquisition, how long does it take for them to produce effect? A.

Some of them instantaneously, but the over-all effect of them takes anywhere a measurement of two to six months.

(Tr. p. 4416)

Q. That depends on the type of promotion? A. Yes.

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(Tr. p. 4420)

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Q. Mr. Trimpe, did Clorox ever conduct sampling operations while you were there? A. We have considered the possibility of sampling Clorox.

Q. Did you ever do it? A. No.

Q. Why didn't you do it? A. For many reasons. One, there is a postal regulation against putting it through the mails. There is a problem of bulkiness of it. And there is the problem of the danger of it, if it gets in the hands of a child in the house, of breakage.

And besides, we have one of the main reasons, that we have good distribution, and you normally sample a non-established product in order to get distribution of the product. So we don't think this is a sound venture.

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(Tr. p. 4426)

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By Mr. Royall:

Q. Mr. Trimpe, the question relating to static and the

(Tr. p. 4427)

answer you gave to it have been stricken by the court, and I think entirely properly. I now ask you to describe for me any new developments in the liquid bleach industry, and we will say the last two years or slightly prior thereto,

as to the use and the market demand of the liquid bleach market as a whole.

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A. The nylon-rayon and other synthetic fabric developments I believe is a very important factor in the continuing use of liquid bleach in laundry, and a big factor in the expanded use of it, because in the past two years it has been proven, and the housewife is recognizing that she can use a liquid bleach on her synthetic fabrics.

The answer of the cotton industry to synthetic fabrics was the application or development of so-called wash and wear fabrics. And these were developed with the use of resins placed on the fabrics, and recently, in the past few months, there have been developed resins which are non-chlorine retentive, so that the housewife can also put these wash and wear fabrics in with the other fabrics in the wash.

There has been—and this is not something new, but the population is increasing at a very rapid pace, and I believe that is a big factor. And then, as I indicated,

(Tr. p. 4428)

the increased use of liquid bleach for other than laundry use is another factor. And when that is coupled with the number of homes that are being built, and our expanding housing economy, together with the increased side uses, I believe that the liquid bleach industry is in good position.

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Q. Mr. Trimpe, do you know of any use of bleach also in laundromats? A. Yes, it is used in laundromats.

Q. Is that a rather new development or expanding development? A. Yes.

Hearing Examiner Haycraft: I would like to ask the witness right there. After reading Mr. Stoneman's testi-

mony I gather that from some research he had made that the percentage of increasing use or increasing volume and so on had declined. I don't think he went so far as to say that the market was declining yet, but that it had leveled off. Have

(Tr. p. 4429)

you had any experience along that line? Have you made any research to see whether the actual volume—you gave your opinion of what you think but have you seen any figures from Nielsen or anywhere else?

The Witness: Yes. I know that that is not true. It is an expanding market.

Hearing Examiner Haycraft: What percentage from year to year?

The Witness: It is very interesting, your honor. The bleach industry, according to——

Hearing Examiner Haycraft: Liquid bleach.

The Witness: ——according to Nielsen, is one of the best indicators of grocery volume in the United States today. In other words, if the grocery business is operating at a ratio of about 6 percent or 7 percent increase per year, the bleach industry has followed almost consistently that.

Hearing Examiner Haycraft: Has that been true in the last year or two?

The Witness: Yes.

Hearing Examiner Haycraft: It has been true in the last year or two?

The Witness: Yes.

Hearing Examiner Haycraft: That is where we are getting the two different opinions.

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(Tr. p. 4431)

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By Mr. Royall:

Q. Does your percentage of the market, Mr. Trimpe, vary in different areas? A. Yes.

Q. Does it vary greatly? A. Yes.

Mr. Tincher: Right there, sir, the first question was all right because we got Nielsen which shows a variance. But if we are going to have the word "greatly" and so on, Nielsen is the best evidence.

Hearing Examiner Haycraft: You have the Nielsen figures. They will either confirm or contradict.

But I know as a matter of fact that it is true.

You can't have the uniformly same percentage in every market. I can almost take official notice of the fact that in a industry of this type there is bound to be variation in percentage of any given market that each one may occupy in it, especially where you have a number of numerous, small, local competitors in local areas who are striving to live, gain, and expand.

(Tr. p. 4432)

By Mr. Royall:

Q. Mr. Trimpe, state whether or not that condition is due to the vigor of the competition of other companies in those respective areas?

Mr. Tincher: I object.

Hearing Examiner Haycraft: Overruled. I will take official notice of that.

I am not going to let anybody prove or disprove it. That is a phenomena that can't be done away with so long as there is competition.

Mr. Royall: Will you let him answer Yes?

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Hearing Examiner Haycraft: Yes, I will let him answer and overrule the objection.

The Witness: Yes.

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(Tr. p. 4433)

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By Mr. Royall:

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Q. I also asked you whether, at the time of the institution

(Tr. p. 4434)

of the nylon-rayon promotion and the spring house cleaning, whether you were planning any other promotions for the future. What is the situation? A. I said that we had the spring and fall—we had the nylon-rayon campaign and spring and fall promotion and that we were considering—I think I am on record as saying this, and if not, I am now—I was considering all the possible promotions that were being used in the bleach industry, as I became aware of them, to perhaps either strengthen the fall and spring house cleaning promotion or consider other possibilities.

Q. That was planned prior to the merger, that consideration? A. Yes. That was in 1956 and 1957.

Q. Has the general policy of the Clorox Company changed since the merger as to promotions? A. No.

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(Tr. p. 4436)

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Hearing Examiner Haycraft:

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Has there been any change as a result of the change in ownership, so far as your duties are concerned?

The Witness: None.

By Mr. Royall:

Q. In your opinion, will the acquisition have any effect?

Hearing Examiner Haycraft: I will sustain the objection to that. He doesn't know what is in the minds of the officials of Procter and Gamble.

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(Tr. p. 4437)

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Mr. Royall: I would like this document marked for identification as RX-77-A and B. It is a letter. We have suggested to counsel for the other side, in order not to encumber the record unnecessarily, that they stipulate this letter from Mr. Stoneman is correct.

Hearing Examiner Haycraft: Did they stipulate?

Mr. Royall: They have not.

(The document referred to was marked Respondent's Exhibit 77-A and B for identification.)

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(Tr. p. 4441)

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Hearing Examiner Haycraft: That is all it amounts to. Respondent's Exhibit 77-A and -B are received.

(The document referred to, heretofore marked for identification Respondent's Exhibit 77-A and -B, was received in evidence.)

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(Tr. p. 4443)

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George R. Bennett

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: Will you state your full name and residence?

The Witness: George R. Bennett, 33 Gates Circle, Buffalo, New York.

By Mr. Pride:

Q. Mr. Bennett, what is your occupation? A. I am President and Treasurer of the Bennett Sales

(Tr. p. 4444)

Corporation, 434, Delaware Avenue, Buffalo, New York.

Q. How long have you held that position? A. I founded the Bennett organization 35 years ago and have been in charge of it ever since.

Q. What business does this Bennett Sales Corporation do, Mr. Bennett? A. We are known as a food brokerage company. In other words, we act as sales representatives for a given number of manufacturers and cover a prescribed territory in Western New York.

Q. What sort of products do these manufacturers produce that you represent? A. Well, we have quite a number of——

Q. I mean, are they grocery products generally? A. Yes, grocery products.

Q. Mr. Bennett, are you a distributor for the Clorox Company at the present time in your territory? A. Yes.

Q. How long have you been a distributor for that company? A. Since about 1926.

Q. In other words, for something around 33 years you have had this account; is that right? A. That's right.

Q. What other products do you handle? A. Well, we have Peter Pan peanut butter made by Derby

(Tr. p. 4445)

Foods, in Chicago; we have the entire Borden food line, that is, Borden's instant coffee, evaporated milk, condensed milk, Starlac, and all of their dry brands. We also have Bon Ami, Sun Sweet Prunes, Sun Maid raisins, and we have Red Heart dog food, and a number of other nationally advertised brands.

Q. You mentioned that you handle the Borden line. You named certain products.

How many products are manufactured by Borden that you handle in your territory? A. I believe it is nine. It is either nine or ten.

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Q. What is your sales territory, Mr. Bennett? A. Roughly, from Western New York State, a very small part of Pennsylvania, just a couple of cities in Pennsylvania—Bradford and Warren—New York State from Buffalo to Rochester.

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(Tr. p. 4446)

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Q. Does the Clorox account represent a substantial part of your business?

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A. Yes. I would say it represents a little better than 25 percent of my business.

Q. Mr. Bennett, are you personally actively engaged in this business of distributing Clorox? A. Oh, yes.

Q. Do you have salesmen who are also engaged in this work? A. Yes, I do.

Q. How many? A. We have nine now.

Q. What do you and your salesmen do in the distribution of Clorox? A. Well, some of the boys and myself call on the wholesale grocers and chain stores. I personally call on the three largest chains in Buffalo. And I have four men calling on the wholesale grocery. Then we have four men calling on the retail grocers, super markets and chains, the individual chain stores.

Q. In addition to performing these duties that you have described, do the people working for your organization

(Tr. p. 4447)

perform any services in the store itself? A. Yes. Our retail men are calling the stores and they clean the stock, if necessary, take a look in the back rooms and bring out stock and put it on the shelves. They might test some of the bottles to see that the caps are on right, and rearrange the shelving, and things of that nature.

Q. Do you or representatives of your Company, Mr. Bennett, regularly report to the Clorox Company? A. Yes. We send them a report, I believe it is once a week.

Q. Mr. Bennett, in the course of your business, do you personally have occasion to visit retail grocery outlets? A. Yes, I do.

Q. How frequently? A. Well, I usually get into the chains, the important chains, some important chains, ever week, because I call on the chain headquarters and I want to know what is going on down at the store level when I am talking to the buyers.

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(Tr. p. 4450)

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Q. Let me ask you, Mr. Bennett, on the basis of your experience, is the shelf space accorded to Clorox today more

(Tr. p. 4451)

or less favorable than that accorded to it before the acquisition?

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A. It is less favorable.

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(Tr. p. 4464)

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Hearing Examiner Haycraft: The question I am putting to you is, in those stores that sell more quarts, do you have more shelf space for your quarts?

The Witness: Not necessarily.

Hearing Examiner Haycraft: Those that are moving?

The Witness: That is the trouble that we are having right now.

Hearing Examiner Haycraft: That is your opinion. You don't know how your sales compare with somebody else's?.

The Witness: I do know——

Hearing Examiner Haycraft: All you know is that

(Tr. p. 4465)

you don't have as much as you did have.

The Witness: If I may, your honor, I do know from this standpoint: That the situation is so bad that we have had to take our men and go out into the chains on Friday and pack out Clorox in all the chains we could possibly reach on that day so we will have enough stock on hand to take care of the week-end sales. If we didn't do that, we would be out of stock all the time.

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(Tr. p. 4466)

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The Witness: Isn't it an indication that we don't have the proper shelf stock when we are constantly running out of stock on the shelves.

Hearing Examiner Haycraft: Yes, that is one indication.

* * * * *

By Mr. Pride:

Q. Mr. Bennett, who are your competitors in the sale of liquid bleach in your sales area? A. 101, made by the——

Q. Is that a brand? A. 101 is a brand of bleach, made by the Gardner Manufacturing Company, made in Buffalo. And Sunny-Sol, made by Wiley Jones, of Calidonia, New York.

Q. Are there any other competitive brands in your sales area? A. We have two private labels in there, that are factors in the market. One is Bright-Sale, in the A&P, and the other is Speed-Up in the Nu-Way markets.

(Tr. p. 4467)

Q. Based on your experience, Mr. Bennett, this Bright-Sale brand that you mentioned, is that sold exclusively in the A&P stores?

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The Witness: Yes.

* * * * *

Q. Do you know whether it is manufactured by A&P itself? A. I do.

Q. Is it? A. No.

(Tr. p. 4468)

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Q. Mr. Bennett, coming back to the subject that has been touched upon by at least one other witness, and I suppose has been touched upon by many others in the course of this case, where, based on your experience is the liquid bleach section located in the average grocery store? A. It is usually in the household section, what we call "household," referred to as the household section, and displayed along with bluings and starches and brooms and mops and things of that nature. Usually among household cleaning agents.

(Tr. p. 4469)

It might be near the soap and detergents section. It is not in it. It might be across the isle or around the corner from it, in the general vicinity of it.

Q. Is the bleach section intermingled with the soap and detergent section? A. No.

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(Tr. p. 4472)

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Room 332
Federal Trade Commission
Washington, D. C.

Friday, 21 November 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 4473)

PROCEEDINGS

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George R. Bennett

resumed the stand as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION

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(Tr. p. 4474)

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By Mr. Pride:

Q. Mr. Bennett, at the conclusion of yesterday's hearing you were telling us about the various promotions of the Clorox Company. I don't know whether I asked you this question or not but did these spring and fall house cleaning promotions that you have described continue in the year 1958, this year? A. Yes, they did.

Q. In the ones that were handled this year, were there any features added over those that were in effect in 1957, for example? A. Yes. We had in addition the consumer liquidating premium, both this year spring and this year fall promotions.

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(Tr. p. 4475)

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Q. Based upon your experience, Mr. Bennett, did the addition of this self-liquidating premium make the promotion more effective?

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A. No, it did not.

By Mr. Pride:

Q. Generally speaking, Mr. Bennett, and based upon your experience, what has been the effect of these promotions on an overall basis, that is, over a period of time?

Mr. Tincher: What promotions are they, sir?

Mr. Pride: The ones he has talked about, the Clorox promotions.

(Tr. p. 4476)

Hearing Examiner Haycraft: Go ahead.

The Witness: They have helped our business during four or five weeks that we have had the promotion on, and when the promotion is off the business settles back to about where it was before.

By Mr. Pride:

Q. Mr. Bennett, based upon your experience, in the marketing of a product such as Clorox, do you consider it desirable to change methods of advertising and promotion from time to time?

* * * * *

A. Oh, yes. Every manufacturer changes his plans from time to time. Any given set of ads or any given promotion will get stale in time and you have to be constantly seeking

(Tr. p. 4477)

new ideas, new approaches to the problem.

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(Tr. p. 4479)

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Q. Are there types of promotion and advertising which are available to regional bleaches which are not available to a nationally-distributed product, such as Clorox?

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A. Yes, there are.

(Tr. p. 4480)

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Q. Will you tell us some of them, Mr. Bennett? A. There are small cooperatives that might have a promotion coming up very suddenly, that will maybe give you a week's notice on it, maybe sometimes not that much. And the local company can jump in and take advantage of that where a national company can not.

Take for instance, this beam-cast. I have always refrained from recommending anything of that nature to any of my principals because once you get into once of those kinds of proposition you have got to go in and do it throughout the entire territory.

Under the Robinson-Patman law, you can not do for one chain what you can not do for another. If we got into one of those kinds of propositions with one of our accounts it would mean that we might have to participate in four or five or six different outlets throughout our entire territory. It would become too costly for a national manufacturer.

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(Tr. p. 4481)

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Q. Are there any bleaches sold in your territory, Mr. Bennett, other than through local grocery stores?

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A. Yes, there are.

By Mr. Pride:

Q. By whom are they sold? A. We have three or four peddlers, so-called, that we refer to as "kitchen bleach makers," and they peddle this bleach from store to store, small stores, and also from house to house.

(Tr. p. 4482)

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Q. Mr. Bennett, what is generally the shelf price of Clorox in your sales territory?

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A. The quart is 17 cents; the half-gallons, 37 cents; and the gallons, 57 cents.

(Tr. p. 4483)

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Q. What are your competitor's shelf prices, generally? A. The 101 and Sunny-Sol are exactly the same.

Q. As Clorox? A. As Clorox.

The private brands are usually one or two cents a quart under our price, and the half-gallons and gallons would be proportionately lower.

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(Tr. p. 4484)

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Q. You told us yesterday that the New-Way chain was now selling a private label bleach under the brand name of "Speed-up," is that right? A. That's right.

Q. When did that brand come into competition with you in the Buffalo market?

* * * * *

A. The early part of this year.

By Mr. Pride:

Q. Prior to that time, did this New-Way chain have a private label bleach? A. No, they did not.

Q. Is that a substantial chain in the Buffalo area? A. Yes, it is.

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(Tr. p. 4485)

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Hearing Examiner Haycraft: Do you know how many stores they have?

The Witness: Yes. They have 90 stores.

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(Tr. p. 4487)

By Mr. Pride:

Q. Mr. Bennett, have your retail salesmen ever worked in conjunction with any Procter and Gamble salesmen? A. No, sir.

* * * * *

Q. Mr. Bennett, shortly prior to the time of this acquisition of Clorox by Procter and Gamble, which was prior to August 1, 1957, did you attend a meeting in San Francisco at which appeared Procter and Gamble executives and Clorox Company executives? A. Yes, I did attend that meeting.

Q. Do you recall anything being said at this meeting about any advantages being obtained as a result of this advertising as a result of joint advertising, joint promotions of Clorox and Procter and Gamble products?

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(Tr. p. 4489)

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A. No, I do not recall any statement of that nature being made at that meeting.

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(Tr. p. 4490)

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Q. Do you know, Mr. Bennett, whether or not the sales of Clorox bleach in the Nu-Way stores have decreased since the introduction of the Nu-Way Store's private label bleach Speed-Up?

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A. They have decreased, yes.

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(Tr. p. 4491)

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Q. Now I ask you have they decreased? A. They have.

Q. Mr. Bennett, what in your opinion has been the effect of the acquisition by Clorox of Procter and Gamble on your business, or on the distribution of sales of Clorox in your territory?

Mr. Tincher: Why is this witness qualified to give opinions?

Hearing Examiner Haycraft: I will sustain the objection. That is something I have to decide on. I am not going to let him decide this case for me.

Mr. Pride: As to whether it has had an effect, your Honor?

Hearing Examiner Haycraft: Yes. That will be an easy way out of it.

By Mr. Pride:

Q. Based upon your experience in the sale of Clorox in the Buffalo territory, Mr. Bennett, do you know of any way in which the acquisition could have effect upon the bleach business in that Buffalo area?

(Tr. p. 4492)

Mr. Tincher: I object to that.

Hearing Examiner Haycraft: Sustained.

By Mr. Pride:

Q. In that question I am relating it to either in respect to the sale of Clorox or any other liquid bleach in the territory.

Mr. Tincher: I still object.

Hearing Examiner Haycraft: Same ruling.

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(Tr. p. 4493)

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CROSS-EXAMINATION

By Mr. Tincher:

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(Tr. p. 4495)

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Q. You sell Bon Ami? A. Yes.

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Q. Where in the grocery store is Bon Ami located? A. Bon Ami is usually located in the soap section, where the cleansers are.

Q. Is that with Ajax and—— A. Yes, Ajax, Babo, and so on.

Q. That group of products in many grocery stores is in what you would call the household supply section? A. No. That would be in the soap section, detergents.

Q. Whereabouts in the soap section are these products? A. They would be along side of the cleansers, Babo and Ajax, and those products that you mentioned.

Q. Those are cleansers. Where in the soap section would these cleansers be? A. They are usually at one end, along down at the end where

(Tr. p. 4496)

all the soaps are.

Q. They are usually at the end where the soaps are, which is immediately contiguous to the beginning of the household supply section, isn't that correct? A. I wouldn't say always immediately. Many times I can take

you in many stores and show you the soap section, say running down this aisle, and the household section might be around the corner on the other side of it.

Q. On the other side of the gondola? A. Yes.

Q. Then many times you will find it across? A. Across, yes.

Q. Facing each other. And many times in some stores you will find it all on one side of one gondola? A. Yes.

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(Tr. p. 4500)

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Q. Do you have a separate corporation exclusively for the handling of Clorox? A. Yes, I do.

Q. What is the name of that corporation? A. Bennett Sales Corporation.

Q. Will you tell us, please, Mr. Bennett, just exactly how

(Tr. p. 4501)

you deal with Clorox with reference to whether you purchase it, do you take it on consignment or how are you billed for it? Just how you obtain it and then how you get rid of it? A. Well, we would go out to a customer and secure a carload order. That carload order is mailed up to the Cleveland plant. Cleveland would ship that car directly to the customer. The day that car is shipped to the customer Clorox Company will then invoice us. And at the very same time we invoice the customer. And we get 2 percent ten days, and we give the customer 2 percent ten days.

On the—let's take this present month, for example. From November 1 until the 15th of November all sales that we would make during that period, that 15-day period,

we would send our check out to the Clorox Company on the 25th of the month, ten days later.

Of course, we never see the merchandise. It is always shipped directly to the customer.

That is about it.

Q. Is that the way you handle all of your other accounts? A. No, it is not.

Q. Then what is the difference? A. The other accounts are handled very similar, yes. They are handled along the same line, with the exception that we are paid a brokerage at the end of each month.

Q. A brokerage fee by the supplier?

(Tr. p. 4502)

A. By the seller, yes. By our principal.

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The Witness: The profit comes between the price that the Clorox Company charges us and the price at which we bill the customer.

Hearing Examiner Haycraft: How much is that difference?

The Witness: About 11 cents a case.

Hearing Examiner Haycraft: What is that, percentagewise?

The Witness: I would say, around 6 percent, I believe. I think that is about right.

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(Tr. p. 4504)

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By Mr. Tincher:

Q. Does the Clorox Company give you a quantity discount which you pass on to the purchaser? A. Yes.

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(Tr. p. 4505)

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Q. Does the Clorox Company have an advertising allowance, a cooperative advertising allowance? A. No.

Q. Does the grocer—— A. I beg your pardon. Yes, I am wrong on that.

Q. What is your relationship with that particular item? A. Just how do you mean that?

Q. What do you do in the payment or the checking of the

(Tr. p. 4506)

payments, the compliance, to see that advertising is used, if any? A. Well, we naturally call in the advertisers and request them to advertise Clorox. We constantly are after them to get ads. At the end of each three-months period we collect up all the tear sheets and see how much advertising has been done. And we issue a check to them on the basis of so much a case for all they have purchased during that quarterly period.

We then send the consolidated bill to Clorox for all that we have paid out for that quarter, and Clorox in turn reimburses us.

Q. What is that advertising allowance now? A. Six cents a case.

Hearing Examiner Haycraft: Do you send the tear sheets on into Clorox to support your——

The Witness: In some cases we do.

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(Tr. p. 4508)

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Q. This 25 percent of your business, is that the totality of the business of the corporation that you formed to sell Clorox? A. No. That would be 100 percent of the corporation I formed to sell Clorox.

Q. That is what I meant, the totality of it. And that Corporation—— A. 25 percent is the combination of the two corporations.

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(Tr. p. 4511)

Q. Mr. Bennett, you have testified that your shelf space today is less favorable than before the acquisition of Clorox by Procter and Gamble; is that correct? A. That is correct.

* * * * *

The Witness: I base it on my own observation and the reports of my salesmen. I stated, I believe yesterday, that these girls from Beam-Cast are going around in the stores, and this has been particularly true in Loblaw's recently, because Loblaw's have only taken on the Beam-Cast about three months ago.

These girls have been going in the stores, and as a matter of fact, cutting down the shelf space of Clorox and increasing the shelf space of 101 to the point where I made quite a point in going to the vice president of the company and telling him that I didn't think this was fair. As a matter of fact, he issued an order, I understand, to the store managers, but these store managers have been reluctant to stop these girls from doing as they please, because they are afraid of the girls reporting them on out-of-stock conditions.

(Tr. p. 4512)

By Mr. Tincher:

Q. These girls, sir, do they go in and just move the merchandise? A. I beg your pardon?

Q. Do these girls go in and just move the merchandise? A. No, they just don't move it, they do about the same thing that our men do. They might clean out some bottles,

they might see that the merchandise is properly priced, but the main thing that they are trying to do is to get more shelf space.

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Q. Do I understand that they don't—and I am not trying

(Tr. p. 4513)

to give you a hard time, believe me, I am just slightly confused—do you say they don't touch the stock, yet they get more shelf space? A. They do touch the stock, yes. Sure, they have to touch the stock to get more shelf space.

Q. They do rearrange the shelf space? A. Sure they do.

Q. I take it then that your entire testimony about shelf space being less favorable today is based upon that situation in the Loblaw stores? A. That and also the Nu-Way, since they have taken on their private brand. They have pushed Clorox to the side and are giving a lot more shelf space to their own private brand.

Q. What brand of bleach have they cut out? A. They have not cut out any.

Q. There was only one brand of bleach in there before? A. No, they didn't have a private label before.

Q. Only Clorox was in there before? A. No, they had 101.

Q. 101 has been cut down, also? A. No, it has not because they are in there with Beam-Cast. They are protected by Beam-Cast. They are getting more than their share. 101 is getting more than their share.

Q. What is their share, sir?

(Tr. p. 4514)

A. Their share would, to be exact, be about one-quarter the share of Clorox, if you want to base it on turn-over and on sales.

Q. And what have they got it up to, a third? A. No. In many cases it is double the size of Clorox.

Q. How do you know their share should be one-quarter? A. Because I have talked to the store managers and I have talked to the buyer. And I know exactly what the sales of my competition is. Naturally, I would have to know.

Q. And the buyer—— A. I discussed this with the buyers and they tell me what the private label sales are.

Q. What I am trying to determine, sir, is your entire knowledge of what share of shelf space of brands other than Clorox should have is based upon what these store people have told you. A. No, it is not. I have set down at the buyer's desk and he has taken his cards, sat there in front of me and showed me deliveries that went out to the stores on private label, in the same weeks what went out on Clorox. We have made comparisons.

Q. When did you do that, sir? A. We do that frequently, on different products. That is something that we go through on one product or another almost every week of the year.

(Tr. p. 4515)

Q. I am talking of this specific instance. Is that something very recent? A. Yes, that is something quite recent. Within the last thirty days. I believe that I wrote a letter to Mr. Trimpe on this subject within the last thirty days, and I was quite upset and quite mad over the situation. I told him what I was running up against here.

Q. What can you do to correct this situation, sir? A. Well, about all we can do is keep talking to the headquarters and urging them to give us more shelf space based on the turn-over. When we know our sales are greater, we feel we are entitled to more shelf space. At the same time

myself and my salesmen are constantly talking to the store managers or the store owners and I might say pleading or trying to sell them on the idea of giving us more shelf space because we see that they are constantly running out of stock.

As I testified here yesterday, we are having our men go into the stores on Friday and pack-out so that we will have stock there for Friday and Saturday. You can go into almost any of the chains on Monday morning and find their shelves bare, whereas there will still be plenty of private label and plenty of 101 on hand.

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(Tr. p. 4516)

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Q. Isn't it possible those brands are still there because they haven't sold? A. Sure, that is possible. Sure, that is possible.

Q. Of course, you don't know the actual sales of all these private brands and of 101, or of any other brands other than Clorox?

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A. No, I have no figures here that I can quote you.

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(Tr. p. 4517)

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Hearing Examiner Haycraft: How many fronts do you have now of each size in those stores?

The Witness: That varies, your Honor, according to the size of the store. I can picture some stores that will carry possibly six facings of quarts and about the same number of half gallons, and about the same number of gallons. I can picture other stores that might have twice that amount.

And I can picture other stores that have two, two, and two. You just can't make a general statement on that.

Hearing Examiner Haycraft: Each manager has the control of that?

The Witness: Yes.

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(Tr. p. 4519)

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By Mr. Tincher:

Q. Mr. Bennett, I would like to ask you a few questions about this Beam-Cast business that you have testified about. Do you know how much this Beam-Cast costs a subscriber?

* * * * *

The Witness: Yes. I brought a rate card with me.

In Loblaw's—we are talking about two chains now—in Loblaw's they have 24 spots a week. It costs $180. And in Nu-Way they have 24 spots a week and it costs $90.

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(Tr. p. 4520)

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Hearing Examiner Haycraft: Who pays Beam-Cast for this service?

The Witness: The manufacturer.

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(Tr. p. 4521)

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Hearing Examiner Haycraft:

* * * * *

What liquid bleaches have had this?

The Witness: Just 101. They will not take

myself and my salesmen are constantly talking to the store managers or the store owners and I might say pleading or trying to sell them on the idea of giving us more shelf space because we see that they are constantly running out of stock.

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(Tr. p. 4516)

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(Tr. p. 4517)

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The Witness: Yes.

* * * * *

(Tr. p. 4519)

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* * * * *

(Tr. p. 4520)

* * * * *

Hearing Examiner Haycraft: Who pays Beam-Cast for this service?

The Witness: The manufacturer.

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(Tr. p. 4521)

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Hearing Examiner Haycraft:

* * * * *

What liquid bleaches have had this?

The Witness: Just 101. They will not take

(Tr. p. 4522)

competitive products on there.

By Mr. Tincher:

Q. Has your company ever tried to get on Beam-Cast? A. No.

Hearing Examiner Haycraft: He tried to get on. All he has to do is buy it and pay for it.

By Mr. Tincher:

Q. By "your company" I mean your brokerage company. A. We did—I personally used Beam-Cast when it first came out. I used it for a period of thirteen weeks. I tried it out and dropped it.

Q. Why did you drop it? A. At that time they were not performing the services that they are today.

Q. Are you going to look into it and try to take it again, sir? A. No, sir.

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(Tr. p. 4525)

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Q. What promotions of Clorox have occurred in your sales area since August 1957? I believe you mentioned a premium on the two drives this year, the spring and the fall. A. Two promotions, two house cleaning promotions.

* * * * *

The Witness: Spring house cleaning and fall house cleaning.

By Mr. Tincher:

Q. There was a premium on the spring drive? A. Yes.

Q. What was that?

(Tr. p. 4526)

A. An apron.

Q. What was the premium on the fall drive? A. A laundry bag.

Q. Fall drive? A. Maybe a laundry bag in the spring and the apron—the laundry bag was first and the apron was second. Yes, that is right.

Q. From your experience, sir, in selling grocery store products, have you had experience with different types of promotions other than premiums? A. I think probably every type of promotion that has ever been attempted by these companies that I represent.

Q. And those are nationally advertised companies? A. Yes.

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(Tr. p. 4527)

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Q. What is the basis of your statement that self-liquidating premiums in these two drives did not make the promotion more effective than it had been?

(Tr. p. 4528)

A. Well, it didn't help the sales one bit more. I mean, our sales—as a matter of fact, our promotion this fall was not quite up to previous promotions, and premiums did not seem to make too much difference in the Buffalo market any more because of the fact that Nu-Way and Loblaw both have premium plans of their own. They make it very easy for the consumer to obtain a thousand and more premiums at wholesale cost.

On top of that, I don't believe these premium promotions are too effective unless we can get mass displays and display the premium. We are not able to get mass displays in our stores. The stores in our city just simply

refuse to pile Clorox up because they are afraid of the breakage of the product.

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(Tr. p. 4532)

Hearing Examiner Haycraft: He wants to know on what facts he bases his statement that the premiums were self liquidating.

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The Witness: These premiums were offered to the consumer in advertising at a certain price, and I know that the price they were offered at covered the cost and the mailing charges to the Clorox Company.

By Mr. Tincher:

Q. That is what I am trying to find out. How do you know that? A. That is only good business sense.

Q. Is that your answer? A. Yes, that is my answer. I have dealt with enough of these self-liquidating premiums that I know that no manufacturer pays more than what he advertises or offers them to the consumer.

Q. Have you ever bought and used these premiums yourself? A. Yes, I have bought a number of premiums myself.

(Tr. p. 4533)

Q. As a broker? A. As a broker. Not for Clorox, however. I have used them in connection with some of our other lines.

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(Tr. p. 4534)

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Q. You talked about peddlers of kitchen bleaches, "kitchen bleachers," I believe you called them. That is nothing new. We have had such peddlers of liquid bleach

in the liquid bleach industry from time memorial, haven't we? A. Oh, yes.

Q. Who are these peddlers in your sales area, and by that I mean, who is the individual or the company or—— A. They don't go by any company names. They go by their individual names, and they are coming and going.

Q. They come and go all the time. And that has been true for many years? A. I wouldn't know how often they come and go, but I know during the war, or just before the war, we had a great many of them. Then he disappeared during the war. Then they came back again after the war.

Q. Did they sort of appear more frequently in periods of

(Tr. p. 4535)

recession, when lots of people are laid off work? A. I wouldn't say so, no.

Q. Aren't a lot of the people making bathrub or kitchen bleach, aren't they people who have been laid off from their employment? A. I wouldn't—I don't think I would be qualified to answer that.

Q. You mentioned on Clorox a price of 17 cents a quart and the same for 101 and Sunny-Sol; is that right?

* * * * *

The Witness: I said that 101 and Sunny-Sol's

(Tr. p. 4536)

prices are exactly the same as ours, 17 cents, 37, and 57.

By Mr. Tincher:

Q. Right, sir. A. I said that on the private labels—referring to Brightsale and Speed-up—that they are one or two cents less per quart than Clorox or Sunny-Sol or 101. And proportionately lower on the half gallons and gallons.

Q. Right. That "proportionately" is what I was getting to. The private labels in your area in the gallon-size sell for around 39 cents, don't they? A. No, they are not quite that low.

Q. Forty-one? A. No. I would say they are—they are 49.

Q. A&P is selling Bright Sale at 49 cents? A. Forty-nine.

Q. Loblaw's? A. Loblaw's are 57, on Clorox. Loblaws do not have a private label.

Q. Does New-Way have a private brand? A. Yes.

Q. What is it selling for? A. Forty-nine.

Q. And the same question with respect to the half-gallons about the prices of the various private brands? A. Thirty-three on the private labels.

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(Tr. p. 4538)

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Q. Let's talk about A&P. A&P has always sold its private label liquid bleach on the shelf considerably less than it charges for Clorox, has it not? A. That is correct.

Q. That would go back for a period of time several years prior to the acquisition of Clorox by Procter and Gamble? A. Yes.

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(Tr. p. 4544)

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Q. Is Utica, New York, in your sales area? A. No.

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Q. Olean? A. Olean is.

Q. What bleaches are sold there, liquid bleaches? A. 101, Sun-Sol, and a little bit of Radiant, which is a little

company, a very small company in Olean, a local product.

Q. Has it been there since 1955? A. Yes.

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(Tr. p. 4546)

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William Keller

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: State your full name and address, please.

The Witness: William Keller, 5 Kenwood Avenue, Verona, New Jersey.

By Mr. Royall:

Q. Mr. Keller, by whom are you employed? A. Great Atlantic and Pacific Tea Company.

Q. In what capacity are you employed? A. Assistant buyer.

Q. Do you, in the course of your regular duties, receive reports from time to time about purchases made by A&P of Clorox bleach? A. Yes, sir; I do.

Q. And of purchases made by A&P of Brightsail? A. Yes, sir.

Q. Do you, in the course of your business, compile this information that you received?

(Tr. p. 4547)

A. Yes, I did.

Q. Do you receive it on a periodic basis? A. Yes, sir.

Q. How often? A. Well, our Bright Sail suppliers usually supply the information at the end of each month. Some on a quarterly basis.

Q. How about the Clorox; what information do you get that from? A. We get that from the Clorox Chemical Company.

Q. How often? A. Every six months.

Q. What is the purpose of that? Is that for the purpose of comparing the two? A. Yes.

* * * * *

Q. They are the two largest sellers of liquid bleach?

(Tr. p. 4548)

A. Yes, sir.

Q. In your stores. Do those purchases reflect the sales that you make of those bleaches? A. We purchase those products on a weekly basis.

Q. What is that? A. We purchase on a weekly basis. It is easy to replace inventory.

Q. So, for all practical purchases, your purchases and sales are the same? A. Practically.

* * * * *

Q. Do you have that information in total quantities, that is, total quantities of 32-ounce equivalent units? A. No. Ours are in case-purchase reports.

Q. By sizes? A. Yes, sir.

Q. Have you converted that into 32-ounce equivalent units; that is, a quart unit? A. That is a quart unit.

(Tr. p. 4549)

Q. Have you, by multiplication, reduced that to a quart unit? A. We don't generally, but it can be done.

Q. You have done it in this case at our request; is that right, sir? A. Yes, sir.

Q. And have you done that for the first half of 1957, for the second half of 1957, and for the first half of 1958? A. Yes, sir.

Mr. Royall: I would like this marked for identification as Respondent's Exhibit 78.

(The document referred to was marked Respondent's Exhibit 78, for identification.)

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Mr. Royall: Your Honor, we offer in evidence Respondent's Exhibit 78.

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(Tr. p. 4552)

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Hearing Examiner Haycraft: You can do that. If you want to present an earlier period you may get that as a part of your rebuttal if you think it is necessary. I don't think it is necessary. If you think it is, that will be up to you. That won't have any bearing on this particular exhibit. The objection is overruled.

Respondent's Exhibit 78 for identification is received in evidence.

(Tr. p. 4553)

* * * * *

Q. Mr. Keller, does anyone else sell, any other company, sell Bright Sail except A&P? A. No.

Q. Does A&P manufacture its own Bright Sail? A. No. We purchase from outside suppliers.

Q. How many different manufacturers do you buy it from, approximately? A. Five or six.

Q. Included in that number, will you state whether or not Purex, Linco, Prescott, and Hood are included? A. Yes, sir.

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(Tr. p. 4554)

CROSS EXAMINATION

By Mr. Tincher:

Q. Included in that number should be Prescott Company, of Passaic, New Jersey? A. Yes, sir.

Q. The Hood Chemical Company of Ardmore, Pennsylvania? A. Yes, sir.

Q. Linco Products of Chicago? A. Yes, sir.

Q. Charles H. Netherson Company, of Dallas? A. Yes.

Q. The Purex Corporation, of South Gate, California? A. Yes, sir.

Q. And Sapo Elixer, of St. Louis? A. Yes.

Q. Do each of these liquid bleach producers also sell in the A&P stores their own brands of liquid bleach? A. I don't know about Netherson. I know Prescott sells Dazzle bleach.

Q. And that is sold in the A&P stores? A. Yes, that is their brand.

Q. In certain sections of the country? A. Yes.

Q. How about Purex? A. Purex does, yes.

(Tr. p. 4555)

Q. How about Linco? A. Yes.

Q. Hood? A. Yes.

Q. What is the reason, sir, for buying private labels as well as the regular brand from these manufacturers? A. What is the reason?

Q. Yes. Why isn't it all one or the other?

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The Witness: It is a customary practice of our company to buy private labels.

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(Tr. p. 4559)

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Q. In addition to these six suppliers who sell you Bright Sail, and some of them sell you their own brands, what other suppliers sell liquid bleach to A&P? A. I wouldn't know offhand because there are many local bleach manufacturers that we never see any records of our purchases on those products, because they are only local concerns.

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(Tr. p. 4570)

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Marvin J. Eubanks

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: State your full name and address.

The Witness: Marvin J. Eubanks.

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(Tr. p. 4571)

By Mr. Pride:

Q. Mr. Eubanks, what is your occupation? A. At the present time I am employed by the Kroger Company in their Chicago division as grocery merchandiser.

Q. How long have you been with the Kroger Company? A. Since 1947.

Q. In what capacity, sir? A. I joined Kroger in 1947 and was in our home office in various capacities. While I was there I travelled our 23 divisions and then in

1954 I was transferred to our Chicago division as grocery buyer. Then in March of 1956, was made grocery merchandiser, the position I now hold.

Q. How many stores are there in the Kroger organization, Mr. Eubanks? A. In the entire organization there are around 1424, I think.

Q. How many divisions are there in the Kroger organization? A. There are 23 divisions throughout the Mid-West and South.

Q. How many stores are there in the Chicago Division? A. At the present time, 79.

Q. What are your duties and responsibilities as a grocery merchandiser in the Chicago division? A. I am responsible for buying and selling of all grocery products.

Q. What authority do you have in connection with the

(Tr. p. 4572)

carrying out of those duties? A. Well, I have complete authority and responsibility for the items that we buy, the items that we sell, along with supervising a staff of buyers and working with our stores and our field organization.

Q. In general does the grocery merchandiser in the Kroger divisional organization have the same general duties and responsibilities in the various Kroger divisions? A. Yes. Basically the same—they are basically the same throughout the entire Company.

Q. And is the Chicago division, let us say, typical, organizational-wise, of the various Kroger divisions?

* * * * * *

A. Yes, it is typical.

Q. Is liquid bleach an item which is sold in all of the Kroger stores in your division, Mr. Eubanks? A. Yes, it is.

Q. How many brands of liquid bleach are being sold in Kroger stores in the Chicago area? A. At the present time we are carrying four brands. We carry Clorox in quarts, half-gallons and gallons; we carry Linco in the same three sizes; we carry Fleecy White in

(Tr. p. 4573)

quarts and half-gallons; and a brand called Say-A-Day in gallons.

Q. Mr. Eubanks, have these brands of bleach been sold in these sizes that you have named in the Kroger stores since 1956? A. Yes, they have.

Q. Who manufactures the bleaches which you carry other than Clorox bleach, of course? A. Linco is manufactured by the Linco Distributing Company, which has a plant in Chicago; Fleecy White is manufactured by the John Puhl Company which was recently purchased by Purex; and Sav-A-Day is manufactured by the Barton Chemical Company.

Q. Does that have a plant in Chicago? A. Yes they do.

Q. Mr. Eubanks, do you have figures available here showing the sale of liquid bleaches in the Chicago division of the Kroger Company from January, 1956 through July, 1958? A. Yes, I do have.

Mr. Pride: Mr. Reporter, would you mark this for identification as Respondent's Exhibit 82?

(The document referred to was marked Respondent's Exhibit 82, for identification.)

By Mr. Pride:

Q. Mr. Eubanks, I show you this paper which has been marked Respondent's Exhibit 82 for identification, and ask

(Tr. p. 4574)

you what it is? A. These are our movement figures of liquid bleach from 1956 through August, 1958. However, these are converted to their gallon equivalents. The figures that I put together were in cases.

As I understand, it was asked that they be changed to gallon equivalents, which I have checked.

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(Tr. p. 4575)

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Mr. Pride: I offer the exhibit.

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VOIR DIRE EXAMINATION

By Mr. Tincher:

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(Tr. p. 4578)

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DIRECT EXAMINATION (resumed)

By Mr. Pride:

Q. In this period, Mr. Eubanks, which includes, as it is stated here, the first eight months, then the third category

(Tr. p. 4579)

here showing 12 months from August 1957 to August 1958, is there any overlap of the figures which appear—is there any inclusion of the figures which appear in the first eight months' figures into the 12 months' figures for 1957-1958? A. No, there are not. What he said there is correct. We do operate on a 12-period calendar—13 four-week periods.

The figure shown here, it says the first eight months of 1947, are the first eight periods of 1957.

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(Tr. p. 4583)

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Hearing Examiner Haycraft: Yes, to get the total.

As I understand it, this is offered solely for the purpose of showing the relative market share handled by the Kroger stores in the Chicago area and not to show a comparative trend.

I will accept the exhibit for that purpose.

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(Tr. p. 4585)

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Hearing Examiner Haycraft: The objection will be overruled, and Respondent's Exhibit 82 will be received in evidence.

(The document referred to, heretofore marked for identification Respondent's Exhibit 82, was received in evidence.)

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(Tr. p. 4587)

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By Mr. Pride:

Q. Tell me, Mr. Eubanks, what is the policy in connection with the allocation of shelf space in the Kroger Stores in Chicago?

Hearing Examiner Haycraft: For liquid bleach.

The Witness: The basis on which space is allocated to bleach, or any other item for that matter, is based on sales of the particular item.

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(Tr. p. 4588)

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Hearing Examiner Haycraft: Is that left up to the store manager?

The Witness: For the most part; yes, sir.

Hearing Examiner Haycraft: He has a general policy?

The Witness: Yes, sir. He has the prerogative of rearranging and reallocating space in his store, depending upon the rate of sale of the product.

By Mr. Pride:

Q. That is all under your supervision, however, Mr. Eubanks? A. That is correct.

Q. Let me ask you, in the light of your policy in the Kroger Stores, allocating shelf space, has there been any change in that policy as to the shelf space allocated to Clorox before it was acquired by P&G and after it was acquired by P&G? A. There has never been any change whatsoever.

Q. In this policy of allocation do you attempt to apply that with respect to each brand of bleach that is sold in the Kroger Stores? A. That's correct.

Q. Does Clorox get any preference in that allocation? A. No preference unless we have more people wanting Clorox in an individual store than some other brand.

(Tr. p. 4589)

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Q. In the allocation of shelf space in your stores, in line with this policy that you have stated, is the fact that a particular company manufactures a number of products which are sold in your store of any significance? A. No. It matters not how many items a particular firm makes or sells. We are only interested in the individual product.

Q. Do your stores, by the way, sell products manufactured by Procter & Gamble? A. Yes, we do. We stock most of the products that P&G makes but not in all sizes. We do not carry, I am positive, at least one size of Camay, and we are going to discontinue Duz because it is not selling fast enough.

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(Tr. p. 4596)

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Q. Mr. Eubanks, in terms of purchases of Clorox made by your company for your stores, are they in any way affected by the fact that P&G now owns Clorox? A. There has been no effect.

Q. Does the fact that P&G manufactures certain items

(Tr. p. 4597)

in the soap and detergent field which have substantial consumer demand have any effect upon your purchases of Clorox? A. It has had no effect.

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(Tr. p. 4598)

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Q. I will ask you whether the fact that Procter and Gamble does manufacture these other items in the soap and detergent field have any effect upon its ability to force —and I use the word in quotes—or require you to increase your sales of Clorox in order to secure other Procter and Gamble products?

* * * * *

A. Certainly in this day and age of modern merchandising, with the competition as keen as it is, no one will force us to buy a product, and I hope that never happens.

I don't see how they can possibly force us to buy a product.

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(Tr. p. 4599)

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Q. Mr. Eubanks, since the acquisition by Procter and Gamble of Clorox on August 1, 1957, has there been any change in the sales method or sales activities of the distributors of Clorox?

* * * * *

A. There has been no change in the method of our purchasing Clorox since the acquisition of them by Procter and Gamble.

By Mr. Pride:

Q. I have a few questions here, Mr. Eubanks, that touch upon subjects that have been testified about. One, the question of the location of liquid bleaches in your stores. Where are they generally stocked, on the shelves? A. Liquid bleaches are normally stocked in the section close to starches, waxes, other household supplies. It is usually in the same general area of the store as soaps and liquid and dry detergents but it is not normally adjacent to it.

Q. Incidentally, on this subject of shelf space and shelf location, Mr. Eubanks, in the Kroger Supermarkets is a part

(Tr. p. 4600)

of the overall inventory which you have in the store located in the front or selling part of the store?

* * * * *

A. Yes, we normally carry in the front of the store, the selling area of the store, stock to sell to the public.

In the back end of the store, the storeroom or backroom whatever you want to call it, we carry what we call back-up stock as it is needed.

By Mr. Pride:

Q. In the grocery business, this stock that is carried in the selling part of the store, is it referred to as forward inventory? A. Yes, sir. It has been so referred to.

Q. On the basis of your experience and on the basis of your position with the Kroger organization is this forward inventory of any product a fair measure of the shelf space allocated to the product?

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A. Yes, the stock that we have in the front end of the store is our inventory of liquid bleach on the shelves for the most part.

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(Tr. p. 4612)

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CROSS-EXAMINATION

By Mr. Tincher:

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(Tr. p. 4616)

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Q. When we speak of your Chicago division, sir, is that metropolitan Chicago or just what is it? A. The Chicago division of the Kroger Company extends from Waukegan on the north to Aurora and Elgin on the west, Kankakee, Illinois, on the south, and Michigan City, Indiana, on the east.

Q. Do you recall your price structure in general well enough to know, without giving me any exact price, that

(Tr. p. 4617)

Sav-A-Day is bought by your company for less money than you have to pay for Fleecy White and Linco and Chlorox? A. You say price structure. Do you mean cost or retail?

Q. Cost right now, sir. A. We pay less for Sav-A-Day than we do for Linco or Clorox.

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Q. The two sizes of Fleecy White which you do carry, how do they compare in cost to you with the comparable two sizes of Clorox and Linco? A. I believe that we pay less for Fleecy White than we do for Linco or Clorox.

* * * * *

Q. All right, sir.

Will you tell us generally the same information with reference to your shelf prices for these four brands of liquid bleach? A. On Linco and Clorox—and here again I am speaking from memory, which is bad to do because there are many

(Tr. p. 4618)

items involved—I believe that our retail price on quart Clorox and quart Linco are the same—21 cents.

At the present time we have 37 cents a half gallon on Clorox, and 35 cents on Linco. On gallon Clorox we have 61 cents, and I am not positive of the price on the Linco gallons. I would like to look that up to be certain.

Prices do fluctuate, sir, on these items.

Q. I am just trying to get an average, the general run.

How about Fleecy White and Sav-A-Day? A. Our price on Sav-A-Day is less than either Linco or Clorox. Our retail prices on Fleecy White are less than on Linco or Clorox.

I believe in the case of quarts we have—on Fleecy White

quarts we have 19 cents, and Fleecy White half gallons we have 33.

Q. Have these price differentials—by that I mean the differences as you have just given them between different brands—have they been fairly steady during the entire period 1956-57? A. For the period that was in the exhibit here, they were steady. And in some cases, in the case of Clorox and Linco, much of that period of time they were the same.

Q. How do you determine those retail shelf prices, sir, on liquid bleach? A. Prices are normally determined by one of two things: by

(Tr. p. 4619)

mark-up factor for a given commodity group, based on its rate of sale, its turnover rate, plus the competitive situation in a given market.

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(Tr. p. 4622)

Hearing Examiner Haycraft: Do you ever do this same reviewing you are talking about, family review, when someone approaches you and tries to get you to take on a new item in one of these groups, with the promise of advertising promotion and so on?

The Witness: When a new item is presented to us, if we feel that there is sufficient sales potential in it, then we will get together all of the facts about that item and get together the facts about all of its competing items. We will review both, one in the relationship to the other.

In other words, in the grocery stores today, because of the tremendous number of new items that are being offered to us, many of which are duplication of items we already have, we have to decide how much duplication we are go-

ing to have versus the variety that we could carry of these new items.

Hearing Examiner Haycraft: Do you take into consideration such factors as advertising promotion and all that?

The Witness: That is correct.

Hearing Examiner Haycraft: And also the character of the firm that is in back of it, so that you know whether or not he can carry out his promises?

The Witness: That is very true. Today we don't sell groceries any more; they are all bought from us.

(Tr. p. 4623)

Hearing Examiner Haycraft: In other words, the demand is created by the manufacturer?

The Witness: Yes, sir.

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(Tr. p. 4629).

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By Mr. Tincher:

Q. You said the liquid bleaches were close to the starches and waxes?

(Tr. p. 4630)

A. Yes.

Q. Is that a general household section of cleaning aids?
A. Well, it is the laundry auxiliary items or laundry accessories, the same place that you would find bluing and starch, the new products, Sta-Puf and Sta-Flo.

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(Tr. p. 4631)

Q. Basing your answer on your experience with Kroger in Chicago, you recognize do you not that suppliers who

have several products will join those products together in a promotion and obtain display space from you, for example, Kroger, for that promotion? A. They might join them together but that doesn't necessarily mean that we are going to display everything that they join together.

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(Tr. p. 4637)

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Room 532
Federal Trade Commission
Washington, D. C.

Monday, 24 November 1958

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 4638)

PROCEEDINGS

* * * * *

William M. Towers

was called as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION

By Mr. Royall:

Q. Your name is William M. Towers and you are vice president and treasurer of the Clorox Company? A. That's correct.

Mr. Royall: Please mark this exhibit.

(The document referred to was marked Respondent's Exhibit 83, for identification.)

Mr. Royall: Your Honor, we call attention to the fact that this particular document has, within red marks, an exact copy of Commission's Exhibit 402, which was introduced by the Commission.

(Tr. p. 4639)

It is incorporated in this because, as will appear later in the evidence, the other figures relate to it. I thought maybe the gentlemen representing the Commission might wish to check that to see if there is any difference of opinion about that accurately representing that Commission exhibit.

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(Tr. p. 4640)

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By Mr. Royall:

Q. In addition to the matters taken from Commission's Exhibit 402, what does Respondent's Exhibit 83, which I now hand you, purport to show? A. It shows the actual expenditures for the 11-month period August 1, 1957 through June 30, 1958 of the Clorox Company.

Q. And what else in general, without giving the specific figures? A. It also shows the number of cases sold in each of the periods shown, and it shows the advertising and promotional expenditure expense per case for each of the years and periods shown.

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(Tr. p. 4641)

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Mr. Royall: Your Honor, we offer that record in evidence.

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VOIR DIRE EXAMINATION

By Mr. Tincher:

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(Tr. p. 4645)

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Q. I am not an accountant. Do I interpret this document right that the advertising in the post-acquisition period has been at a considerably reduced rate than the pre-acquisition period, advertising and promotion? A. I wouldn't say that it had been at a considerably reduced rate. It is lower than the average of the five-year period ended June 30, 1956, and it is equal to the advertising for the fiscal year ended June 30, 1957, on a cents per case basis.

Mr. Tincher: Mr. Examiner, I submit this exhibit is completely worthless. I think, if you will notice, in the pre-acquisition period we know exactly what occurred because we know the amounts for cooperative advertising or which was changed later to the six cents a case allowance plan, whereas in the post-acquisition period that figure for some reason has been deleted.

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(Tr. p. 4649)

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Hearing Examiner Haycraft:

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While I am inclined to agree with your contention, Mr. Tincher, I don't think it goes to the admissibility of the exhibit but to its weight.

I will allow Respondent's Exhibit 83 for identification in evidence.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 83 for identification, was received in evidence.)

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(Tr. p. 4652)

DIRECT EXAMINATION (resumed)

By Mr. Royall:

Q. Mr. Towers, why does your computation not include cooperative advertising? A. We do not have cooperative advertising.

Q. I mean, for the preceding years. You have these figures on cooperative advertising. A. Yes.

Q. Why did you deduct those? A. We deducted them to get the exhibit on a comparable basis.

Q. Why were they not included within advertising and promotional expenditures? A. We do not consider DCM as part of our present-day advertising and promotional expenditures.

Q. And did you consider cooperative advertising as such? Did you consider cooperative advertising a part of your advertising promotion expenditures? A. No, I would say we did not. The advertising and promotional expenditures that we have included here in the 11-months' period are those over which we have control. It is money spent by the Company for advertising and promotion.

Hearing Examiner Haycraft: It looks to me like one of the changes made was at the time Procter and Gamble took over, and that the old firm did include it.

(Tr. p. 4653)

Mr. Royall: Your Honor, the testimony there shows that it was not to be included in the year——

Hearing Examiner Haycraft: I also note that the 6 cents per case allowance plan was included under the old Company, but it was discontinued after Procter and Gamble took over as a part of advertising promotional expense.

The Witness: That is correct.

Hearing Examiner Haycraft: It looks like just a change in accounting. But in order to make the exhibits comparable, from the standpoint that we want to include all cooperative advertising as well as other types of advertising and the 6 cents a case allowance plan as a part of promotion, the exhibit doesn't disclose what that represents.

Mr. Royall: No, sir; it does not.

* * * * *

(Tr. p. 4654)

* * * * *

Q. Do you have, or can you supply figures for DCM for the period ending June 30, 1958? A. I can supply them. I don't have them with me.

Q. Do you have them in town? A. Yes, I have. I have the figure. I do not have any supporting evidence.

Q. But you could supply that, could you not? A. Yes, I could.

Q. How long would it take you to get that? A. Probably 15 or 20 minutes.

* * * * *

(Tr. p. 4658)

* * * * *

Q. Taking it on the basis that you have prepared this exhibit—refer to it, please—will you state in the record what the cost per case is for each of the years 1952 through 1958, advertising and promotional costs?

* * * * *

A. The cost per case, given exclusive of administration

(Tr. p. 4659)

inasmuch as that is the only place where they are comparable, is for the fiscal year ended June 30, 1952, 19.5 cents per case; fiscal year ended June 30, 1953, 17.2 cents per case; fiscal year ended June 30, 1954, 18.6 cents per case; fiscal year ended June 30, 1955, 16.9 cents per case; fiscal year ended June 30, 1956, 16.1 cents per case; fiscal year ended June 30, 1957, 16.4 cents per case; July, 1957, 16.9 cents per case; and August 1, 1957 through June 30, 1958, 16.4 cents per case.

Q. There was some reference made in the so-called voir dire examination of the complainant that you added administrative advertising expense in the fiscal year 1958. If that had not been added, would the cost per case in that year have been still lower?

* * * *

A. No, I did not, in the figure I read. It was exclusive of administration in all periods so that it would be comparable.

Q. Would you then explain to me the questions he was asked about? In the far right two columns you have $62,439; what is that? A. That is Administration.

(Tr. p. 4660)

And the cost per case shown at the bottom of that column is on two bases: One, exclusive of administration and the other including administration.

Q. And they are reflected on there? A. They are. That is correct.

Q. The difference is 16.7 and with the inclusion of those, is that correct? A. That is correct.

* * * * *

William M. Towers—Direct

(Tr. p. 4661)

* * * * *

Mr. Royall: Your Honor, I would like this paper marked by the witness to be given an identification number.

Hearing Examiner Haycraft: Respondent's Exhibit 84.

(The document referred to was marked Respondent's Exhibit 84, for identification.)

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(Tr. p. 4663)

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Mr. Royall: In connection with Exhibit 84, your Honor, we refer you to one of the several references in the record to the figures of savings.

Hearing Examiner Haycraft: Savings of what?

Mr. Royall: Savings in discounts on radio, magazines, and television.

And on Page 3389, savings of $500 in radio, $50,000 in magazines, and $86,000 in television, or a total of $136,500, and $2,000 in newspapers. That is $138,500.

Hearing Examiner Haycraft: In Exhibit 84 does the word "discount" refer to that amount of $138,500? Is that the figure you used?

Mr. Royall: That is the figure I used to him.

Hearing Examiner Haycraft: When you prepared this Exhibit 84?

Mr. Royall: Yes, sir.

Hearing Examiner Haycraft: Would you take your pen, Mr. Witness, and write above the word "discount," and put in a line showing that that is what you mean, $138,500, so that we will know what the figure is.

(Tr. p. 4664)

Mr. Tincher: I thought it was $140,000 on that page.

Mr. Royall: I said approximately $140,000. I was not trying to be exact, because the percentage wouldn't make any difference. I knew it was around that. And that has been referred to at least four or five times in the record, your Honor.

Hearing Examiner Haycraft: Exhibit 84 for identification is received in evidence in camera.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 84 for identification, was received in evidence and ordered SEALED.)

* * * * *

Hearing Examiner Haycraft: The witness is excused, to go and get this paper that he has that will show the actual cooperative advertising of—what did you call that?

The Witness: DCM.

Hearing Examiner Haycraft: For the DCM plan for August 1957 through June 30, 1958, and twelve months ended June 30, 1958.

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(Tr. p. 4668)

* * * * *

CROSS-EXAMINATION

By Mr. Tincher:

Q. Mr. Towers, did you find the figure the examiner requested you to find? A. I found the figure rounded to the nearest hundreds, if that figure is satisfactory. I did not have the figure carried out to the last dollar.

Q. Do you have that figure before you? A. Yes, I have.

Mr. Tincher: I would like to have the witness place that figure on the exhibit that is in camera, sir.

Hearing Examiner Haycraft: All right.

Mr. Tincher: That is exhibit 83.

And please initial it after you do.

Mr. Royall: Will it be all right to put a ring around it, to show that it is not part of his testimony?

Hearing Examiner Haycraft: When you get it done I want to see it.

If you add the July, 1957, figure that you have in Exhibit 402, to the one that you have in Exhibit 83 under

(Tr. p. 4669)

column August 1, 1957 through June 30, 1958, would you have the correct amount which would go into the last column, 12 months ended June 30, 1958?

The Witness: Yes, you would, rounded to the nearest hundreds.

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(Tr. p. 4674)

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Hearing Examiner Haycraft:

* * * * *

I would like to have the witness—and I don't know whether he will ask him that question, or you, on redirect—I would like to have the witness's testimony as to what changes will be made in his cost per case if this additional figure is included.

Have you computed that?

* * * * *

By Mr. Tincher:

Q. Would you do that? A. I have computed it for the fiscal year ended June 30, 1956-1957, and then for the one-month period July, 1957, and the 11-months period ended June 30, 1958.

William M. Towers—Cross

(Tr. p. 4675)

Q. And you put that on the exhibit itself? A. No, I did not put it on the exhibit.

Q. Would you do so, please, sir.

* * * * * *

The Witness: Cents per case?

Hearing Examiner Haycraft: Yes.

Mr. Tincher: Yes, the additional cents to be added.

Mr. Royall: And put a ring around it.

Do you want it added up?

Mr. Tincher: You can, if you want to.

(Tr. p. 4676)

* * * * * *

Q. What does the item "miscellaneous" refer to? A. Miscellaneous is miscellaneous advertising and sales promotion not classified anywhere else.

Hearing Examiner Haycraft: Could you give an example?

The Witness: For one thing, we used to have—still do have, I think—these cards that we will send out occasionally that will entitle a person to a bottle of Clorox when they write in and offer a suggestion for the use of Clorox, or something. That expense is included in there.

Frankly, I can't think of anything right now, I am sorry. I just don't recall anything.

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(Tr. p. 4677)

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Q. All right, sir. Where would a reduction of income because of cents off on a special label appear as a promotion expense on this exhibit? A. Cents off? That is one item that is in "miscellaneous."

Q. That is another on Miscellaneous? A. Yes, that is true.

Q. I notice quite a jump on promotional materials. Will you explain the reason for that increase? A. The promotional material figure that we show as indicated also includes the extra special packing costs on the various promotions during the period.

Q. That would be, once again, for example, the cents off on the special label? A. It would be the extra factory costs involved in the

(Tr. p. 4678)

cents off, that is correct. Extra label costs, extra packaging costs, if any.

Q. Does this exhibit include the amounts paid for redemption of premiums in the spring 1958 Clorox drive? A. These are self-liquidating premiums that you are speaking of, I believe. If there were any net difference, it would include that, yes.

Q. And there was such a difference, was there not, sir? I will ask you to look at your supporting records for corroboration of that. A. Yes, there is a difference. However, this may or may not be entirely attributable to the fall and spring promotions. The Los Angeles dish cloth premium would also be in here.

Q. When was that promotion, sir?

* * * * *

The Witness: That was May 1958, and the cost would be included in this figure.

(Tr. p. 4679)

By Mr. Tincher:

Q. That is when the drive started in Los Angeles on this premium? A. Yes.

* * * * *

Q. Let me ask you, sir, the amount that your records show as being a cost for premiums, is that an amount that was paid after the Clorox Company received from Procter and Gamble the money that the housewives had sent in for the premiums?

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(Tr. p. 4680)

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A. I understand your question now.

Actually this premium expense is net of the cost of the premium less the amount that was received in purchasing of those premiums, the redemption of those premiums.

Q. Does this exhibit include only domestic sales, or does it include sales overseas and in Canada as well? A. It includes all sales.

Q. Is that true for all the years here? A. Yes it is.

Q. Does this include advertising and promotional expense overseas and in Canada as well as in the United States? A. Yes it does.

Q. For all the years? A. For all years.

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(Tr. p. 4681)

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REDIRECT EXAMINATION

By Mr. Royall:

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(Tr. p. 4683)

* * * * *

Harry Nickelson

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

Harry Nickelson—Direct

DIRECT EXAMINATION

Hearing Examiner Haycraft: Harry Nickelson? Where do you live?

The Witness: 434 Ridge Road, Highland Park, Illinois.

Mr. Royall: Your honor, the subpena against Mr. Nickelson was withdrawn, or is now being withdrawn, I suppose is more accurate. I think the reason is probably known to your honor.

(Tr. p. 4684)

He is appearing voluntarily because the Nielsen Company has always taken the position that this is confidential information and he can't be forced to give it. In order to keep his record clear, his personal record clear, we followed that procedure. I believe Government Counsel had the same situation presented to them when they were considering it.

* * * * *

By Mr. Royall:

Q. What is your occupation, Mr. Nickelson? A. I am a Vice President of the A. C. Nielsen Company.

Q. And where is that located? A. 2101 Howard Street, in Chicago.

Q. And what is its general business? A. We gather facts which originate as we conduct audits in food and drug stores; and in addition we have our broadcast division which measures the listening to radio and viewing of television and other special research activities.

Hearing Examiner Haycraft: That is known as the Nielsen ratings?

The Witness: Yes, it is.

By Mr. Royall:

Q. What position do you hold with the company?

(Tr. p. 4685)

A. I am a Vice President of that company.

Q. And how long have you been associated with it? A. Since 1941.

Q. How long have you been Vice President? A. Since November 1954.

Q. What are your duties and responsibilities in your present position? A. I am in charge of sales and service for the food-drug division for Central United States. That is the area covered from Buffalo to roughly Atlanta, to Texas, to Denver.

Q. Does your service, that is the Nielsen service, include grocery store items moving directly to customers through door to door distribution? A. They do not.

Q. It is confined to those moving through the grocery stores, is that right? A. Grocery stores plus country general stores plus delicatessen, but not moving direct to consumers.

Q. Does it include the sale of bleach to laundromats? A. It does not.

* * * * *

(Tr. p. 4711)

* * * * *

By Mr. Royall:

Q. Do the Nielsen figures include for Purex any private

(Tr. p. 4712)

label brands that they sell?

* * * * *

The Witness: The Purex figures which are shown on the Purex brand label include only Purex. They do not include any private label or control label merchandise. The controlled label or private label merchandise would be in

the total, but not in the Purex, not under the Purex brand information as designated in any of these reports.

This is our standard operating procedure.

They would be a part of the "all others."

(Tr. p. 4713)

* * * * *

Q. State whether or not it necessarily follows from that that if Purex does manufacture private labels in these territories and sells them, that the total share of liquid bleach manufactured by Purex is understated.

* * * * *

A. The Purex figures that we have do not reflect private label business, and therefore they are not a proper recording of the total company sales for Purex, merely this portion of it that is sold under the brand name of Purex.

* * * * *

(Tr. p. 4715)

* * * * *

Q. Mr. Nickelson, in your survey of the territory in which Erie, Pennsylvania, is located, do you take a count and acquire information as to a store in Erie, Pennsylvania? A. We have a store in Erie, Pennsylvania, which is a part of our regular sample stores used in securing all of our standard Nielsen data.

* * * * *

Q. Does Exhibit RX-88 show the market share of certain companies in that store for the period from April 1957 through March 1958? A. It shows the brand shares, not company shares.

(Tr. p. 4716)

Q. Brand shares? A. For Clorox, Purex, and the

all others combined for that one store over that period of time.

Q. Was this information acquired in the regular survey and not by any special request of anyone? A. The information was gathered as part of our regular reporting, and no special survey.

Mr. Royall: Your Honor, we offer this in evidence. I would like to make a statement about it when I offer it. This represents one store in Erie.

May I pause and ask him a question?

By Mr. Royall:

Q. What type store is it? A. This is a medium independent store.

Q. It is not one of the large or one of the small ones? A. That is right.

Hearing Examiner Haycraft: Is it a chain store?

The Witness: It is not a chain store. It is an independent.

Mr. Royall: Your Honor, while it represents only one store, it was a store selected by Nielsen, whose efficiency and accuracy has at least been pretty well endorsed in this proceeding. It was a store regularly used as a part of the audit which they prepared. It is a medium-sized store, at neither extreme. And it is the only information which is

(Tr. p. 4717)

available, so far as we have been able to find, from a totally independent survey not prepared at the request of any interested person.

It represents, your Honor, the only statistical method possible to us to answer the government's Exhibit 450. We can not now make a retroactive survey—and could not at the time that was introduced—make a retroactive survey in any way.

We can realize that there may be arguments as to its weight, but we believe that under the special circumstances of this case that this exhibit should be admitted.

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(Tr. p. 4718)

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Hearing Examiner Haycraft: The objections are pretty well presented. But I believe that, under the circumstances, it will go more to the weight to be attached to the exhibit than it will be to the admissibility of it. It is just as if you had gone into that one store and said we take these figures. There is no way of knowing whether or not it is typical. As pointed out by counsel in support of the complaint, it will probably force him to get the actual figures of sales into that area to see which one of these exhibits, if either one of them, are any good.

Without looking at it, I will receive it in evidence for whatever weight it may have. I don't believe it is very

(Tr. p. 4719)

good, but I will take it.

Mr. Royall: May this be received in camera?

Hearing Examiner Haycraft: Yes.

(The document referred to, heretofore marked Respondent's Exhibit 88 for identification, was received in evidence and ordered SEALED.)

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(Tr. p. 4720)

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Mr. Royall: Will you mark this for identification, please, as Respondent's Exhibit 89.

(The document referred to was marked Respondent's Exhibit 89, for identification.)

By Mr. Royall:

Q. Mr. Nickelson, I hand you Exhibit RX 89, and ask you if that was prepared from data which appears in the two regular volumes of your reports that are in evidence? A. Yes.

Mr. Royall: Your Honor, this relates to the sales of Purex during two specific 12-months periods, October, 1955 to September, 1956, and October, 1956 to September, 1957.

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(Tr. p. 4727)

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Mr. Tincher: I move to strike that, sir, as going beyond the stipulation of the parties in Los Angeles.

Hearing Examiner Haycraft: No, it is not covered by the stipulation.

The stipulation was sufficiently broad, in my

(Tr. p. 4728)

judgment, to allow this exhibit.

It is intended to contradict or explain, rather, or take a part of 462 which they wish to emphasize. It is quite apparent from the cross-examination of Mr. Stoneman by Mr. Royall that he was laying the foundation then for what he is putting in now.

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(Tr. p. 4729)

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Mr. Royall: This exhibit is offered to show that for the year prior to October 1, 1956, the share of Purex was greater than it was in the year following that shift.

Hearing Examiner Haycraft: What does that prove?

Mr. Royall: It proves that their share of the business went down after they changed back to direct salesman.

Hearing Examiner Haycraft: You can't pin all that on the change. You don't know what caused it to go down. There may have been some competition there.

Mr. Royall: There may have been, but they offered it and I am sure this will appear from the reading of the record. I don't know what pages. It was offered for the purpose of showing that salesmen were an advantage over distributors, and we are trying to meet that headon.

Hearing Examiner Haycraft: I haven't received any exhibit that I know of on that basis because I don't consider that an issue in this case.

Show me in the complaint where that is an issue.

Mr. Royall: The complaint speaks in broad terms, but certainly there is no question they contend that the salesmen were preferable, and that Purex was an example of it.

Hearing Examiner Haycraft: That depends on what is said.

(Tr. p. 4730)

Mr. Royall: I think it does, too. If they abandon that contention this wouldn't be any trouble. But I don't think they are about to abandon it.

Hearing Examiner Haycraft: I think I can help you a little bit by abandoning it for them. I am not going to make any finding based on any testimony as to which is a better method, based on the Purex experience. I am not going to let that get to be an issue in this case so you won't have to meet it.

That is getting off into a collateral by-pass; there are so many things can enter into a change from one system of distribution to another that it would have no bearing on the issues in this case.

I am satisfied that if I allow this exhibit in that the next hearing in rebuttal they probably will want to run

this down to a later date to see whether or not they have recouped themselves, or whether they could have recouped and gone back into a better percentage based on a number of other things.

So, I think that the question of what experience Purex may have had on whether they sell through brokers or through salesmen has no bearing whatever on the issues in this case. If there is anything in there that has been offered for that purpose, I didn't know it. But I am certainly not going to allow this exhibit because we are

(Tr. p. 4731)

getting into a controversy that I don't want involved. There are too many factors enter into it which are foreign to this case. I am rejecting the exhibit.

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(Tr. p. 4736)

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Room 532
Federal Trade Commission
Washington, D. C.

Tuesday, 25 November 1958

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 4737-A)

PROCEEDINGS

* * * * *

Harry Nickelson

resumed the stand as a witness for the Respondent and, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION (resumed)

Mr. Royall:

* * * * *

(Tr. p. 4757)

* * * * *

Mr. Royall: Your Honor, this testimony that has been adduced, it appears has been related to the period covered by the stipulation and by the evidence which the complainant has put in. We do not intend to depart from that or waive any rights or violate any period that has been made out in the complainant's case.

We announced before we started that we intended to

(Tr. p. 4758)

try this on the complainant's proof, that is, on the facts covered by the complainant's proof.

However, as Mr. Tincher brought out, and as we are going to bring out, there is data after that date on many subjects.

We have this thought to throw out to your Honor. We are not going to offer any evidence beyond that date. We are going to object to anything that goes beyond that date in accordance with the record. But we would be willing to discuss with your Honor and with counsel off the record additional data which we have available to us.

I am making this statement, your Honor, because we don't want to be put in the position of seeming to hold back anything, even though we have a legal right to do it, without a discussion with your Honor and counsel.

Specifically we have some data that we would like to, or be willing, at least, discuss if your Honor and counsel thought that that would be worthwhile, but we do not want it on the record because we are going to adhere to that unless there is a decision otherwise.

Hearing Examiner Haycraft: Suppose you submit the data to counsel in support of the complaint and see what he has to say about it; see whether he would be willing to stipulate that that should be included or if he would prefer to leave it out.

(Tr. p. 4759)

* * * * *

Mr. Tincher: I thought your Honor would take evidence right up to the date of the hearing.

Hearing Examiner Haycraft: Certainly I will but that doesn't change the stipulation that you may have with counsel.

Mr. Royall: The reason I bring it up now is because Mr. Nickelson is going, after his cross-examination is over, and that is the reason I brought it up at this time.

I am not urging this. I am just saying we are willing.

Mr. Tincher: I will say if we have a complete Nielsen, rather than these selected things from Nielsen, we will be very happy to look at it.

Mr. Royall: Do I gather from that that counsel is not interested in discussing?

Mr. Tincher: I am interested in seeing a complete Nielsen, not selected portions of it.

Mr. Royall: You don't know whether this is a selected portion or not.

(Tr. p. 4760)

Hearing Examiner Haycraft: I would suggest that you at least see what it is that he has before you make a statement about it.

Mr. Royall: Your Honor, we are not urging it a bit. We would rather stop just where the record shows. But I want to be fair about this thing. If they don't want to see it that ends it.

Mr. Tincher: All I can say, sir, is that we can't have the burden shifted to us about whether somebody comes forward with the evidence or not. We can just stand mute on that subject.

Mr. Royall: I wonder, in order to save—in case there should be a change of mind on that—I wonder if I would be within my rights—I don't want any special privilege—of having a number given to this, your Honor, and have it designated as a number, and then not disclose it to anybody unless these gentlemen—not put it in the record. If I identify it, am I under any obligation to show it to anybody or put it in the record?

Hearing Examiner Haycraft: No, you are only obligated to show it if you offer it.

Mr. Royall: We would like this marked for identification, your Honor.

(The document referred to was marked Respondent's Exhibit 94, for identification.)

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(Tr. p. 4762)

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Mr. Royall: I would like this document marked for identification.

(The document referred to was marked Respondent's Exhibit 95, for identification.)

Mr. Royall: This, your Honor, is a special report prepared for Procter and Gamble on forward inventories against sales relationship for the period October-November, 1957. This is not, your Honor, one where the material comes completely from the regular Nielsen reports.

By Mr. Royall:

Q. I hand you Exhibit 95 for identification, Mr. Nickel-

son, and I ask you to explain what it represents, and who employed you and what you did?

(Tr. p. 4763)

A. This special analysis was ordered by the Procter & Gamble Company to appraise the forward inventories in total and in product class share of total to consumer sales.

In order to get this information we had a special tabulation of the audit forms which contain a separation of the forward inventories, that is, the inventories in the selling area of the store versus the remainder, which would be essentially the back-room stocks.

These audits of the forward versus reserve inventories are made in connection with all of our audits, but they are not all tabulated. They are tabulated only on special request, and when a client wants to appraise the forward versus reserve inventory, when they have a special problem in that connection.

The data on forward inventories are shown both in terms of dollars and in terms of ounces and consumer sales are also shown in terms of ounces.

It is my opinion that the ounces are the best means of comparison because you have a common denominator in which you can put both sales and inventories. If we are to use dollars the inventories are priced at one level and the consumer sales are priced at another level. That is, the inventories priced at cost and the consumer sales at the retail selling price. Therefore, the dollars are not the same.

(Tr. p. 4764)

So I think we can confine our comparisons here to the figures showing ounces of forward inventories and consumer sales.

Is that a complete answer to your question?

* * * * *

Hearing Examiner Haycraft: I didn't understand where you got the inventory information?

The Witness: The forward inventory information?

Hearing Examiner Haycraft: Yes.

First, tell me what a "forward inventory" is.

The Witness: Forward inventory is that inventory which is located in the front portion of the store, or in the selling area of the store, as differentiated——

Hearing Examiner Haycraft: On the shelf?

The Witness: On the shelf or in bins or—— .

Hearing Examiner Haycraft: I understand that now.

The Witness: (Continuing) ——or in displays as compared with back-room stock. In other words, this is the goods on the shelf.

Hearing Examiner Haycraft: Where did you get that?

The Witness: As a part of our standard audits, your Honor, our auditors record the inventory in the forward selling area of the store in a different place than they record the inventory in the back room. Since it is so

(Tr. p. 4765)

recorded by a special tabulation we can produce the inventories for the forward portion of the store.

Hearing Examiner Haycraft: In other words, you collected the information although you did not publish it?

The Witness: We collect it on all reports but this is not a part of our standard Nielsen report. It is tabulated only when it is requested by a client. And, incidentally it carries a separate charge.

* * * * *

Q. In other words, that audit is taken in the regular course of your business? A. Yes, it is.

Q. And the audit on which these figures are based was not taken at the special instance of Procter and Gamble, the audit itself? A. No. This is a standard type of report which is ordered

(Tr. p. 4766)

by all of our clients in appraising the forward inventory versus reserve stock and relating it to sales.

Q. And do clients from time to time ask for reports of this nature from you? A. Yes, sir. And we bill them for it as an extra.

Q. This includes not only the shelf space of Clorox, but also the shelf space of Procter and Gamble's principal products in these categories; is that correct? A. That's right.

Q. And of all the package detergents, the universe is all the package detergents in that category and all of the products in the other categories? A. That's right, sir.

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(Tr. p. 4776)

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Q. Is Comet the fastest moving product of Procter in the cleanser field? A. It is the only Procter and Gamble product in the cleanser field.

Q. Is Clorox a fast-moving product?

(Tr. p. 4777)

A. Compared with other products in the field, it is. It is fast moving by comparative standards.

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(Tr. p. 4778)

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Hearing Examiner Haycraft: I am not impressed by

that. I am impressed by the fact that it is not a complete study.

I think for that reason I am going to have to reject the exhibit. If you had this complete; that is, all of the Procter and Gamble products in each one of these classifications, then I think probably I would receive it.

(Whereupon, Respondent's Exhibit 95 was rejected.)

Mr. Royall: Comet's are the only product in that, of Procter and Gamble, and Clorox, the only one in the liquid bleach——

Hearing Examiner Haycraft: I can see where three would be.

Mr. Royall: And the other two are rejected?

Hearing Examiner Haycraft: Yes.

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(Tr. p. 4779)

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Hearing Examiner Haycraft: You have your objection and I have ruled on it.

I have granted it as to the first two columns, the first two items or categories, the package detergents and toilet soaps. I have not granted it at this time at least on Comet and Clorox. We will see now what comes out of it, see how he makes the comparison. I don't know what the basis of this is. But at least you have it reduced to items which are the Procter and Gamble items.

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(Tr. p. 4780)

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By Mr. Royall:

Q. What was Comet's percentage of shelf space based on ounces? A. 21.2 percent of the product class total.

Harry Nickelson—Direct

(Tr. p. 4781)

Q. What is Comet's share of the market on consumer sales? A. 28.4 percent during October-November, and this is on ounces the same as the share of shelf space.

Q. In other words, 21.2 for shelf space, 28.4 for sales? A. Yes, sir.

* * * * *

Hearing Examiner Haycraft: Until I understand it, it keeps bothering me.

As I understand it, is there any relation or any significance between your 21.2 and your 28.4? That is, the 21.2 being the share of product class in the forward inventory, and the 28.4 percent being the consumer sales. Does that indicate the movement of the product?

The Witness: The share of sales does, your honor. This says that Comet's share of shelf space is less than its share of consumer sales.

Hearing Examiner Haycraft: In other words, it is selling beyond its shelf space allocation?

The Witness: Exactly.

Hearing Examiner Haycraft: And the movement would justify a larger shelf space? Is that it? If you were allocating it on movement?

(Tr. p. 4782)

The Witness: If you were allocating shelf space on the basis of movement, yes, sir, it would deserve more shelf space.

* * * * *

By Mr. Royall:

Q. What is the situation as to shelf space and movement as to Clorox? A. Clorox accounts for 45.2 percent of the ounce sales, and this is during October-November; and 39.2 percent of the shelf space.

Hearing Examiner Haycraft: In other words your testimony as to that would be the same in the relation between those two figures as it would as to Comet?

The Witness: Yes, it would.

Mr. Royall: Please mark this for identification.

(Tr. p. 4783)

(The paper referred to was marked Respondent's Exhibit 96 for identification.)

(Tr. p. 4784)

By Mr. Royall:

Q. Mr. Nickelson, there has been testimony in this record relating to the location of liquid bleach in grocery stores. Have you, at the request of the respondent, made a special report and made a special investigation for determining the stock location of liquid bleach in grocery stores? A. Yes, we have.

Q. That was not taken from your regular investigation or covered by your regular report, was it? A. That is right, sir. We issued a special questionnaire to all of the men who make audits in the stores for the purpose of finding out where the liquid bleach stocks were located.

Q. This does not tie in in any way with the Nielsen reports that are in evidence up through November 1957, does it? A. The figures contained therein do not show in any of the regular standard reports, but the data are secured from exactly the same sample stores, and the projection techniques used to develop these statistics are exactly the same as are used for the regular reports.

Q. But done for a special purpose on a special order, is that correct? A. Yes, sir.

Q. But it was done during the period you were making your regular routine audit

(Tr. p. 4785)

A. Yes, sir.

Q. And by the same personnel? A. Yes, it was.

Q. However, this exhibit does not relate in any way to share of market, does it? A. No, it doesn't.

Q. It has no connection with the data which is in up to December 1957? A. That is right.

Q. Will you describe the method that was used in determining the data carried in Exhibit 96, and describe what supporting data or papers you have for it?

* * * * *

A. We designed a questionnaire which we sent to the men who are auditing every one of the regular stores used to produce this regular report. They were to answer the question as to whether or not liquid bleaches were stocked

(Tr. p. 4786)

adjacent to or intermingled with package detergents or toilet soap, or whether they were stocked elsewhere in the store.

* * * * *

Hearing Examiner Haycraft: According to what you have just said, could they answer three ways?

The Witness: It was a two-way answer. If they were adjacent to or intermingled, if this was yes it was yes on either basis.

* * * * *

A. (continuing) After we got the questionnaires in our Chicago office, we tabulated them in the normal procedure, giving each of the various store types their proper weighting in the projection. That is why it was important to use a regular standard sample, which is a good cross section of all grocery stores, and we could use the standard projection techniques in order to arrive at these data.

Harry Nickelson—Voir Dire Examination

(Tr. p. 4787)

By Mr. Royall:

Q. Do those questionnaires constitute the basic document on which this is prepared? A. That is right.

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(Tr. p. 4788)

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Mr. Royall: Your Honor, the purpose of this exhibit I think has been made clear, the general purpose, and appears on the cover which reads as follows: "Special

(Tr. p. 4789)

report prepared for Procter and Gamble on stock locations of liquid laundry bleaches." We offer it in evidence, your Honor.

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VOIR DIRE EXAMINATION

By Mr. Tincher:

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(Tr. p. 4790)

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Q. I notice a column here, "Immediately adjacent to package detergents or toilet soaps." What does "immediately adjacent" encompass? A. When they are on the same shelf next to package detergents, when they are on the same shelf immediately below package detergents or toilet soaps—I shouldn't say on the same shelf, but in the same area immediately adjacent, the same area below package detergents and toilet soaps, or in the same area immediately above package detergents or

(Tr. p. 4791)

toilet soaps.

Q. In the situation where you had package detergents and soaps, and then a row or maybe ten rows of Spic and Span, or some product such as that, and then liquid bleach starts, where would liquid bleach be included then on this exhibit? On the column "Elsewhere in the store"? A. By definition, they would be "Elsewhere in the store."

Q. And if the liquid bleach were in the gondola directly across the aisle from the package detergents and soaps, would they also be in the category "Elsewhere in the store"? A. If I recall correctly, they would be.

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(Tr. p. 4792)

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Hearing Examiner Haycraft: Respondent's Exhibit 96 is received in evidence.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 96 for identification, was received in evidence.)

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(Tr. p. 4793)

CROSS EXAMINATION

By Mr. Tincher:

* * * * *

Q. With reference to Respondent's Exhibit 88, which is in camera—and I will hand it to you at this time—that is the exhibit concerning the grocery store in Erie, Pennsylvania—from your experience with Nielsen wouldn't you be one of the first to say that you can't tell about a city or a county from having that sort of information from one grocery store located in that city or county? A. I would agree, Mr. Tincher, that we nor anybody else could

assure this Court that this store is typical of the Erie market. All we can testify for is that this actively represents the situation in this one store.

Q. I have a couple of general questions, sir, about Nielsen in general.

I think there are approximately 1600 stores in your survey, aren't there? It fluctuates? A. That is approximate; that's right. Once in a while we get thrown out, or a store burns or we change the sample but it is an approximate average.

Q. Do these stores know and realize that they are in the Nielsen survey? A. Well, naturally they know we are in the store. It is

(Tr. p. 4794)

my opinion very few of them know what we are doing or what we use the information for.

Q. They just know it is a Nielsen survey? A. That's right; without knowing what we are doing, or the specific products which we audit.

Q. Are these supposed to be confidential? Nobody is supposed to know what stores? A. We do not tell the Procter and Gamble Company nor any of our other clients, nor anyone, the names and addresses of our stores.

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(Tr. p. 4802)

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Q. With reference to Respondent's Exhibit 95, this comparison between Comet and Clorox and the forward inventory and consumer sales, would you tell us—and I missed this—would you tell us what this forward inventory is?

(Tr. p. 4803)

* * * * *

The Witness: The figures shown in that table on forward inventories designate the amounts of inventory that are in the forward selling area of the store. The specific figures which are most directly comparable, that is, forward inventory versus sales, are expressed there in the common denominator of ounces.

You can't take units or any other measurement because units aren't exactly the same. You would be comparing one brand with one average size of units and another brand of another size of units.

Therefore, computations were converted to ounces in making these calculations. But it represents an audit of the inventories located in the selling area or the forward area of the store.

These audits of inventories are a part of every single audit that is made for all product groups. It was not a special audit. But it was a special tabulation in order to get the forward inventory portion pulled out of the total inventory which is a part of all standard reports.

(Tr. p. 4804)

By Mr. Tincher:

Q. And the total inventory would include the back room or store room? A. Yes, sir. The inventories which are included in the standard report book include all inventories without regard to their locations that are in the store.

Q. Your instructions on this exhibit, as I understand it, was just to get the forward inventories? A. Forward inventories only, that's right, sir.

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(Tr. p. 4816)

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Hearing Examiner Haycraft: The last question, as I get it, was Sani Clor did not appear in October-November in the Pacific territory, and you asked whether that meant they were out of business or what.

The Witness: Let me clarify the record on that score. This does not mean that Sani Clor wasn't sold in the Pacific territory. We were not commissioned to break it

(Tr. p. 4817)

out as part of this report.

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(Tr. p. 4823)

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Marco F. Hellman

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: State your name and address for the record.

The Witness: Marco F. Hellman, and my residence address is 3515 Pacific Avenue, San Francisco.

Hearing Examiner Haycraft: Go ahead.

By Mr. Royall:

Q. Mr. Hellman, what is your occupation and with what company, if any, are you connected? A. I am the senior partner of J. Barth and Company, a San Francisco brokerage and investment banking firm.

Q. How long have you been with them? A. I have been with them since June of 1946.

* * * * *

Marco F. Hellman—Direct

Q. Are you acquainted and have you been acquainted with Mr. Roth and Mr. Feigenbaum of the old Clorox Chemical

(Tr. p. 4824)

Company? A. I have known Mr. Feigenbaum practically all my life, and I have known Mr. Roth since I went into J. Barth and Company, or shortly thereafter.

Q. Has J. Barth and Company been active in distributing and dealing in Clorox stock, Clorox Chemical stock? A. Yes, sir.

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(Tr. p. 4829)

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Hearing Examiner Haycraft: What is your contention? What are you going to argue to me? Are you going to say that Procter and Gamble allowed more than they should have for that goodwill?

Mr. Tincher: I am going to say that the goodwill and trademark was worth the difference between $30.3 million and the value of the assets.

Hearing Examiner Haycraft: That is your contention?

Mr. Tincher: Yes, sir. That doesn't say they paid more than they should have or less than they should have.

Hearing Examiner Haycraft: As I get it, you are saying that it was neither way?

Mr. Tincher: That is right. I don't think it is material or relevant.

Hearing Examiner Haycraft: On that basis, Mr. Royall, if he is not going to make the contention that you paid too much for the business of Clorox, why should we worry about it?

* * * * *

Hearing Examiner Haycraft: I have myself on

(Tr. p. 4830)

record here. I have asked the question and I will tell you now that based on the evidence that is in the record, and what he just now said, I am not going to allow any such argument. I am not going to make a finding of that kind.

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(Tr. p. 4832)

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By Mr. Royall:

Q. Were you closely in touch with the situation at the time that the transaction was completed?

Mr. Tincher: Objection.

Hearing Examiner Haycraft: Go ahead.

A. Yes, sir.

By Mr. Royall:

Q. What price was old Clorox asking of Procter and Gamble?

Mr. Tincher: I object.

A. On my recommendation they asked a price of 9 shares of Procter and Gamble for every 10 shares of old Clorox.

By Mr. Royall:

Q. Were there negotiations about it?

Mr. Tincher: I object. May I have a continuing objection without saying it?

Hearing Examiner Haycraft: Yes. And I will rule later. A. There were negotiations and the final deal was consummated on 8½ shares for 10.

By Mr. Royall:

Q. Did you at that time make a memorandum as to the method of arriving at that ratio of 8½ to 10? A. Yes, sir; I did.

(Tr. p. 4833)

Mr. Royall: May I have this marked for identification, please?

(The document referred to was marked Respondent's Exhibit 97, for identification.)

By Mr. Royall:

Q. Is this that memorandum? A. Yes, sir; it is.

Mr. Royall: I offer that in evidence, your Honor.

Mr. Tincher: I object.

Hearing Examiner Haycraft: Let me see it.

Go ahead.

By Mr. Royall:

Q. State whether or not this method shown on Exhibit 97 is an accepted method of estimating the exchange value of two corporations which are merging or engaged in acquisition? A. Yes, sir; it is the most accepted practice to use dividends and earnings.

Q. Based upon your experience, was the price paid for old Clorox by Procter and Gamble a fair price? A. Yes, sir. If anything, it was lower than I recommended in the first place.

Q. Do you mean Procter and Gamble paid a lower price than you—— A. That's right, a lower price than I recommended originally.

(Tr. p. 4834)

Q. In transactions of this character, based on your experience, is book value considered to represent the fair selling price of a going concern? A. No, sir; it does not. There are many cases where businesses are sold at less than book value on account of low earnings, and there are other cases where companies are sold at many times book value.

Q. Are earnings and dividends the principal factors? A. Yes, sir; they are.

Q. Do you know who initiated as between Procter and Gamble and Clorox, who initiated the matter of merger? A. Yes, sir. I had the original thinking on it——

Q. On behalf of Clorox? A. On behalf of Clorox.

Mr. Royall: That is all, your Honor.

Hearing Examiner Haycraft: I have allowed these questions over the objection of counsel in support of the complaint. I will now entertain a motion to strike.

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Mr. Tincher: We move to strike.

Hearing Examiner Haycraft: Motion granted.

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(Tr. p. 4836)

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Alvin A. Bissmeyer

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: Will you state your full name and address?

The Witness: Alvin A. Bissmeyer. The address is 2025 Peachtree Road, Atlanta, Georgia.

By Mr. Royall:

Q. Mr. Bissmeyer, what is your occupation and with what organization do you work? A. I am the general grocery buyer for Colonial Stores, Inc.

Q. How many stores do you have? A. Approximately 465.

Q. Where are they located? A. The stores are located in the states of Ohio, Indiana, Kentucky, Tennessee, Georgia, Alabama, North Carolina, South Carolina, Maryland, Virginia, and northern Florida.

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Q. How many are supplied from the Atlanta warehouse? A. 102.

(Tr. p. 4837)

Q. And how many from the Thomasville, Georgia warehouse? A. 50.

Q. And how many from the Northern Virginia warehouse? A. 82.

Q. How long have you been in the grocery business yourself? A. Since 1931.

Q. I believe you are a general grocery buyer for Colonial. What are your duties? A. Well, as general grocery buyer I am responsible for the buying and the merchandising of all grocery products.

* * * * *

Q. Is it also your responsibility to determine in what stores what items will be marketed? A. Yes, sir.

Q. Does Colonial sell a private brand, so-called, private brand household bleach?

(Tr. p. 4838)

A. Yes, sir, we do, in some stores. Not all.

Q. And what is the name of it? A. Southern Manor Spotless.

Q. You say that is sold in some of your stores? A. That's right.

Q. Where is this manufactured and by whom? A. Well, the bleach that is sold in the stores supplied out of the Atlanta and Thomasville, Georgia warehouse is manufactured by the Purex Corporation Branch in Atlanta,

and the bleach that is sold under the private label in Norfolk, Virginia area, the store service from that warehouse, is purchased from the Blue Magic Company in Wilson, North Carolina.

Q. Wilson? A. Yes, sir.

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(Tr. p. 4839)

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Q. In what sizes is Southern Manor bleach now sold? A. Just in quarts.

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Q. Do you know how many quarts you sold in 1956?

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The Witness: In 1956 it amounted to 65,784 quarts.

By Mr. Royall:

Q. How many in 1957? A. In 1957 it was 76,392 quarts.

Q. How about in 1958 up to this time? A. Up to and including November 15 we had sold 179,748 quarts.

Mr. Tincher: Is this private labels?

(Tr. p. 4840)

The Witness: Yes.

By Mr. Royall:

Q. Do you have your records to support that? A. I have the records taken out of our purchasing files.

* * * * *

Q. Have you made any specific future plans, immediate future plans, with reference to your private label bleach? A. Yes, we have.

Q. With whom have you made contracts about it? A. We made contracts with the Blue Magic Company in Wil-

son, North Carolina to supply us with considerable quarts, additional quarts of quart size, and in addition the half-gallon and gallon sizes.

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(Tr. p. 4841)

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Q. When was that made? A. It was in October.

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(Tr. p. 4843)

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Q. Mr. Bissmeyer, did you enter also into an agreement with the Texize Company? A. Yes, sir.

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Q. When was that? A. Within the last ten days.

(Tr. p. 4844)

Q. What is your reason for making these contracts?

* * * * *

A. Two of our principal competitors, A&P and Winn-Dixie, have private label bleaches that they have been promoting and selling at prices lower than any bleach that we have had in the store, and we want to be competitive.

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(Tr. p. 4845)

CROSS EXAMINATION

By Mr. Tincher:

Q. Now, sir, you say you have private label in some stores, is that correct? A. That is correct.

Q. In how many of your stores do you have that? And my questions will all be with reference to this 1956-57-58 period that you gave.

(Tr. p. 4846)

A. In 234 stores, to answer your question.

* * * * *

Q. At the present time then, sir, what determines whether you have private label liquid bleaches in one of your stores or not? A. That is determined by the competitive situation. Our competitors, as I mentioned before, the A&P Tea Company, who have stores in all the areas that we are located in, have a private label bleach. And we need one to compete with the A&P Tea Company. We also need a private label bleach to compete pricewise with other competitors in some areas. For example, with Winn-Dixie stores in the Southeastern

(Tr. p. 4847)

states.

Q. Why do you have to have it to compete? A. Because it gives our competitors an advantage to sell a bottled bleach at a lower price than we can sell a bottle of bleach.

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(Tr. p. 4848)

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Hearing Examiner Haycraft: Do your know anything about the quality of this private label bleach?

The Witness: All that I know is that it is a 5¼ percent bleach, and I am not a technician nor a chemist. Beyond that, I don't know.

* * * * *

Q. You mentioned that you buy private labels from Blue Magic, Inc.?

(Tr. p. 4849)

A. Yes, sir.

Q. You buy no bleach from them of their own brand, do you? A. Yes, we do.

Q. What is the name of it? A. Blue Magic.

Q. Where do you sell that? A. We sell it in the North Carolina stores, but I couldn't tell you just which stores. Some of them in North Carolina sell it.

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Q. On this private label bleach you pay the supplier a lower price than you pay the suppliers of Roman Cleanser and Clorox, do you not? A. That is true.

Q. How much bleaches do you carry in your stores? A. Do you mean brands?

Q. Yes. A. Some stores have three brands, some have sometimes five.

Q. Do you carry Roman Cleanser?

(Tr. p. 4850)

A. In some areas, yes, sir.

Q. And Clo White? A. Yes, sir.

Q. And Clorox? A. Yes, sir.

Q. What other brands, sir? A. Texize and Purex in Indianapolis, and Blue Magic in a few stores in North Carolina. That is about all I can think of.

Q. You commenced selling your private label bleach in June of 1954? A. That is approximately correct. I don't have the figures with me. That is approximately right.

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(Tr. p. 4851)

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Q. Clorox is carried in all of Colonial stores, is it not? A. Yes, sir.

Q. And Roman Cleanser is carried in some of your Colonial stores? A. Yes, sir.

Q. And Clo White is carried in some? A. Yes, sir.

Q. Texize in some? A. That is true.

Q. And all the other brands including private labels in some? A. That is right.

Q. Don't you have any personal knowledge at the present time, sir, about the prices your stores charge the housewife for these bleaches? A. It will vary according to divisions. I can give you the approximate prices, but there will be a variation of a cent or two one way or the other.

Q. All right, sir.

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(Tr. p. 4852)

A. On the private label bleach, on the quart size, the price is approximately 14.5 cents, or two for 29.

Another brand that I did not mention that we have is Fleecy White. We have that in quite a few stores. I didn't think of that one before.

On Fleecy White and Roman Cleanser we will sell at about 18 cents for the quart size. Clorox will sell at approximately 19 cents to two for 39 in the quart size.

Hearing Examiner Haycraft: That first one, you meant 15 cents or two for 29? You said 14.5.

The Witness: The reason I say that, some of our stores have half-cent keys on the registers. Two for 29 or 15 cents in most stores, yes.

By Mr. Tincher:

Q. How about Roman Cleanser? You mentioned that. A. I mentioned that and Fleecy White, which are pretty close in price.

Q. How about Texize? A. Texize will be priced along with Fleecy White and Roman Cleanser.

Q. And Clo White? A. I am not familiar with the retail price of Clo White.

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(Tr. p. 4854)

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Q. Since you started having private label in 1954, have you been adding it to your stores as you go along or did you

(Tr. p. 4855)

start out having pretty much the same number of stores you have now selling private labels? A. We sold the quart private label in the stores in the area supplied by the Atlanta and Thomasville warehouses since 1954. We did not start to sell this bleach in the Norfolk, Virginia, area until early June of 1958.

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(Tr. p. 4856)

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REDIRECT EXAMINATION

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(Tr. p. 4857)

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Q. Do you consider a private brand sale important in your competition in the bleach industry?

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A. Yes.

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RECROSS EXAMINATION

By Mr. Tincher:

Q. You just told counsel that you sell your private label

as first-quality, a quality as good as the rest of them; is that true? A. That is true.

Q. As a matter of fact, you are selling private labels on a price consideration rather than on a quality consideration, are you not? A. Quality at a price.

Q. But it is primarily price that sells private label, isn't it? A. That is true.

Q. There is a class of people who want the lowest price and that is who you are aiming at with private labels?

(Tr. p. 4858)

A. That is right. But if the quality wasn't satisfactory, they wouldn't buy it at any price.

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(Tr. p. 4859)

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Room 532
Federal Trade Commission
Washington, D. C.

Wednesday, 26 November 1958

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 4860)

PROCEEDINGS

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Bernard F. Trimpe

resumed the stand as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (resumed)

By Mr. Royall:

Q. Mr. Trimpe, as a sales manager of the Clorox Chemi-

cal Company, were there any advertising programs or promotional plans which you thought desirable which you were prevented from engaging in because of lack of financial resources? A. None.

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Q. Did you engage in such programs and promotional plans with the Clorox Chemical Company as you thought necessary and desirable?

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(Tr. p. 4861)

A. Yes, we had adequate resources to use.

Hearing Examiner Haycraft: You mean they always gave you everything you asked for?

The Witness: No, they didn't give me everything I asked for, your Honor. But we felt that if we made sense in our recommendations that we could go ahead with our advertising promotions the way we wanted to.

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By Mr. Royall:

Q. Mr. Trimpe, in your capacity as sales manager, have you personally had an opportunity to observe the methods by which private brands merchandise, particularly with regard to their location in the store and the amount of shelf space devoted to them?

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(Tr. p. 4862)

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A. Yes, I personally visit, as I have indicated in previous testimony.

By Mr. Royall:

Q. What is the source of your personal knowledge?

A. My personal visits in the stores and travel with the retail men.

Q. What have you personally observed as to private brands in the matters that I asked you about?

* * * * *

A. Well, in travelling around the country, I personally have observed that the people who have private labels normally give special space, shelf space. They give special preference in the location within the bleach section to their own private label bleach.

(Tr. p. 4863)

By Mr. Royall:

Q. Does that apply to the quantity of shelf space, too? A. Yes, it does.

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(Tr. p. 4881)

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By Mr. Royall:

Q. Now, Mr. Trimpe, you testified last week in connection with the Buffalo situation at transcript 4373 and 4374 that it was necessary for you to consider the price of competitive brands in determining your price on some occasions? A. That is true.

Q. You testified about the Buffalo situation. State whether or not you had a similar situation recently in another location? A. Yes, we have had a——

Q. Where was that? A. Philadelphia.

(Tr. p. 4882)

Q. Will you give the facts about that? A. One of the local chains in the Philadelphia market decided that it wanted to raise the price on Clorox in the market and did so, quite a substantial raise at the retail level. And

because the market is pretty well dominated by the chains and the market as soon as the first one did the others followed suit, so we had in that market then our prices consistent in all the chain outlets at this new high level.

This caused me some concern and as it continued I worked with our distributor to try to do everything we could to offset this situation. I asked him to try to get features or displays to show or to get the price down consistent to the position throughout the rest of the eastern market and basically throughout the rest of the United States.

We were able to get one feature and one time when we did get a feature the other chains met it and we were able to get some business back. Over the first six months' business we have lost some volume in this market as a result of this pricing situation.

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(Tr. p. 4883)

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Q. Did the chain which you did not name but which raised the Clorox price, did that chain have its own private brand? A. Yes, as do all the others in the market.

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(Tr. p. 4895)

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Q. I hand you a copy of Commission's Exhibit 214, and ask you whether or not that is an illustration of what you were referring to about mops and pails (handing documents to the witness). A. Yes, this is a typical brochure which is put out every year, twice, in the spring and in the fall, to be used by our salesmen in calling on the trade, either at the chain or the wholesale or the retail

level, which summarizes the objectives of the promotion in the sense that we would like to get them to tie Clorox in these displays in with these . . . items in the store.

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(Tr. p. 4898)

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Q. I ask you at this time, sir, what future promotions are you contemplating now which have not already been mentioned by you?

Mr. Tincher: I object, sir.

Hearing Examiner Haycraft: Sustained.

Mr. Royall: Well, your Honor, I am not——

Hearing Examiner Haycraft: I told you yesterday I am cutting this off up until today, not in the future.

Mr. Royall: All right, sir.

I was asking it solely because we wanted to give you a complete picture, and I won't tender an answer, but I do call attention to your Honor that if any question comes about this promotion we have——

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(Tr. p. 4899)

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Mr. Royall:

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Your Honor, I want to make this proposition to you.

Your Honor ruled out Exhibit 71, which related to this list of reports on competitive activities of other liquid bleach manufacturers.

It seems to me, your Honor, that at this stage there has been sufficient testimony by Mr. Trimpe that this information which he receives in the ordinary course of business plays an important part in his sales policies, and in his promotion policies.

He has testified that that was the purpose for which he has collected this information over a course of years. This chart shows nothing more than the compilation of that information obtained from these weekly reports which we have offered for inspection.

It is offered, among other things, for the purpose of demonstrating the many types of promotions, frequency of promotions in the liquid bleach industry, and the highly competitive nature of the industry; and to also show the

(Tr. p. 4900)

background necessary to the frame of mind which the Clorox Company, and Mr. Trimpe, as its sales manager, has in planning its own promotions.

We re-offer it generally and if it is not admitted generally we re-offer it as the frame of mind, state of mind, which your Honor has referred to on occasions, particularly——

Hearing Examiner Haycraft: But that is not in issue, as I understand it.

Mr. Royall: I don't know, sir, whether it is relevant on intent and purpose or whether it is predatory or not, and we think it is, and we re-offer it, your Honor.

Hearing Examiner Haycraft: If this repondent was charged with a violation of the Robinson-Patman Act, or something of that kind, where it was necessary for him to justify what he did by what competitors did, then, of course, we have a different story.

But that isn't involved here and the only possible purpose it could serve is one which it is not competent; that is, it is based on hearsay entirely and hearsay which does not come within the exceptions to the hearsay rule under the Danbury-Hatters decision. So I renew my ruling.

Mr. Royall: All right, sir.

Bernard F. Trimpe—Direct

(Tr. p. 4901)

By Mr. Royall:

Q. Now, Mr. Trimpe, on pages 2819 to 2821 Mr. Buchman, Savol Bleach Company, testified that Clorox used a 10 cent count and recount deal in the spring of 1958 in Hartford, Connecticut, and also a ten cent advertising deal there. Mr. Buchman was asked in the record to let us know if he found out that his testimony was in error and we have not heard from him.

I ask you did the Clorox Company or before it the Clorox Chemical Company, during your experience, use such a promotion as testified by Mr. Buchman? A. Absolutely not.

Q. Don't answer this until his Honor rules on it:

Mr. Buchman also testified at transcript 2820 that Dazzle did not run this type of promotion in Hartford, Connecticut, in the spring of 1958. Based on your reports received in the regular course of business do you know whether or not Dazzle did run this type of promotion in Hartford in the spring of 1958?

Mr. Tincher: We object to that, sir.

Hearing Examiner Haycraft: Do you have any evidence in the way of ads or promotion data to contradict that? I will be glad to have it, but what you are attempting to elicit now wouldn't be competent and would be hearsay.

Mr. Royall: What we have, your Honor, is a report

(Tr. p. 4902)

from the distributor Abbott, Hall & Co.

Hearing Examiner Haycraft: You better call him. Objection sustained.

Mr. Royall: Your Honor, may I tender this answer?

Hearing Examiner Haycraft: Yes.

Mr. Royall: That Yes, I have this information. My distributor in that area, Abbott, Hall & Co. reported it to me.

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(Tr. p. 4903)

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CROSS-EXAMINATION

By Mr. Tincher:

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(Tr. p. 4910)

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Q. All right, sir. When were these Buffalo and Atlanta tests that you spoke of where the price was increased on quarts to $2.01? A. When were they?

Q. Yes, sir. A. January, I believe. The first part of January of 1958.

Q. And how long did those tests last, sir? A. Roughly about August, I believe in Atlanta we discontinued; and September, I believe in Buffalo.

Q. Now, was this price, $2.01, a price to the grocer from the distributor or your price to the distributor? A. That was the price from the distributor to the grocer and we, in turn, had charged a ten cent increase in price to the distributor.

Q. Now, you said this experiment was unsuccessful. On what did you base that, sir?

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(Tr. p. 4911)

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A. We have IBM record sheets for those territories as we do for all the territories and they are broken down by sizes and by buyers and in tracing our shipments to the

territories, the reaction of our distributors in the territories to the situation, we elected to discontinue it because we did not feel that we could continue to have a higher price on the retail shelves considering all those factors.

Q. Well, did those records show sales decrease? A. Yes. One territory, I will have to pull the record in my mind, but I am sure the Atlanta territory showed one greater than the Buffalo territory, there were variable factors there.

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(Tr. p. 4915)

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Q. Now, from your testimony are you trying to imply or state that Clorox has lost market share since its acquisition by P&G? A. Am I trying to imply that Clorox has lost market share because I referred to the private label growth?

Q. And all the other expansions, acquisitions, and door to door? A. Well, I am not implying anything, I am just stating the facts that in the areas where we have met new private label competition our sales volume is down considerably. I can make a partieular reference to it if you would like.

Hearing Examiner Haycraft: Again you better get your records on that.

The Witness: Yes, sir.

In those areas where we have met new private label competition we are suffering sales losses. And I don't have share figures for individual markets because that is not available to me. It is available to me only from the Nielsen territorial share figures and I can state from the Nielsen share figures that in those areas where private label growth has been extensive, for example, the southeastern territory

of the United States, measured by Nielsen, that I consider a big factor in our share losses in that

(Tr. p. 4916)

area to be the private label growth.

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(Tr. p. 4931)

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Q. Well, could you tell me any place where private labels are higher priced than nationally advertised or regionally advertised bleaches? A. In my own City of San Francisco, California, they are not higher priced than Clorox, but they are higher priced than the local bleach.

Q. And what brands are those, sir? A. Saniclor.

Q. You consider that a private label? A. I am sorry. No, what I said was this, that the private label bleach was Safeway, White Magic is not priced higher than Clorox but it is priced higher than the Saniclor bleach on the shelves right with it, and that situation exists in many parts of the country.

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(Tr. p. 4934)

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Q. Has Clorox ever made private labels? A. No, we have not.

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(Tr. p. 4935)

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Q. Now, at record 4395 you stated, Mr. Trimpe, and I am paraphrasing, if a chain brings in private label, Clorox loses shelf space because shelf space is not expanded. Is that correct?

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The Witness: Yes, he just read it; I did.

By Mr. Tincher:

Q. In that process other bleaches in the store would lose shelf space which were theirs prior to the private label?

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The Witness: Yes, I think there would be a readjustment of shelf space.

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(Tr. p. 4959)

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Q. Do you have any memorandum on your pre-merger promotional policy? A. Pre-merger promotional policy?

Hearing Examiner Haycraft: What in the world are

(Tr. p. 4960)

you going to hope to prove by that?

Mr. Tincher: Sir, the witness testified on direct that he had been thinking about all these promotions long before the acquisition.

Hearing Examiner Haycraft: What of it? Suppose you hadn't, suppose you established that he is wrong about that. What has that got to do with the issues in this case?

Mr. Tincher: It shouldn't have come in on direct.

Hearing Examiner Haycraft: That is what I am trying to tell you. There may be a lot of things going in on direct that you don't need to attack: The weight that is given to them.

The Witness: Yes, we have letters from the agency to me and we have some replies in the files, a cents off label that we used, and we have—I have correspondence from people who come to talk to me about premiums—in the general files back in my office, if that is what you are asking me about.

Hearing Examiner Haycraft: Don't you realize that

when you ask these questions that you only strengthen his testimony along that line?

Mr. Tincher: No, sir, I do not.

Hearing Examiner Haycraft: Sure you do. He has given you volumes of things that he probably might have touched upon on direct examination except the time it

(Tr. p. 4961)

would have taken to bring it out.

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(Tr. p. 4965)

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Q. When was this Philadelphia situation you mentioned, sir? A. It started right after the first of the year, January. I can get you the exact date.

Q. What grocery store or chain was involved there? A. Well, initially A&P Tea Company, and then all of them, all of the other major chains followed suit.

Q. Now, you said you lost volume. Do you have any documentary proof of that? A. Not with me, I am sorry.

Q. Not with you.

Mr. Royall: What is that about?

(Tr. p. 4966)

Mr. Larsen: Loss of sales in Philadelphia.

Mr. Tincher: Once again, sir, we would like to request that.

Mr. Royall: Write it down.

Mr. Tincher: Is my request granted or denied, sir?

Hearing Examiner Haycraft: I thought he was going to give it to you.

Mr. Royall: Your Honor, I don't think we are required to do it, but we want to help any way we can within

reason and I think unless there is some reason not now apparent to me I think we will produce it.

Hearing Examiner Haycraft: As I recall was that something you testified to on direct?

The Witness: Yes.

Hearing Examiner Haycraft: Then you should furnish it.

Mr. Royall: We will bring it in.

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(Tr. p. 4967)

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Q. Now, with reference to your testimony this morning about Hartford, Connecticut, you testified, I believe there was no count and recount or no ten cent advertising deal? A. That is right.

Q. Now, is that as far as the Clorox Company is concerned? A. We have not had a count and recount.

Q. Your broker or distributor might have had? A. No, sir, he could not have had.

Q. And why couldn't he, sir? A. Well, because if we found out he did something that would be outside of our policy and our policy is to suggest to them the resale prices, we would discuss it with him quite seriously immediately.

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(Tr. p. 4984)

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Q. Let me ask you, sir, if your survey of these manufacturers did not indicate in Chicago that the manufacturers selling door to door only hit a few small stores and only in the extremely low income neighborhoods? A. Is that what it says in that letter?

(Document is handed to the witness.)

A. Yes, and I think there is another letter—I guess not. All this indicates to me is they went all out to get this information together and it is true that is what it says.

Mr. Royall: Let me see it a minute, Mr. Tincher.

By Mr. Tincher:

Q. And doesn't that information from your survey reveal that the small stores, where this is being sold, are ones where the distributor's salesmen do not ordinarily call? A. Yes, that indicates that.

Q. All right, sir. A. These small ones—as the Examiner has referred to them, the "Momma-Poppa stores"—we get into three or four times a year, according to the size of the territory.

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(Tr. p. 4986)

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Q. Now, in the fall of this year—the fall of 1958—the Clorox Company distributed coupons worth eight cents on the purchase of the next half gallon of Clorox bleach if the person would buy a bottle of Clorox bleach, did they not? A. In a restricted territory, and the coupon was on the label.

(Tr. p. 4987)

Q. Yes. And those were to be redeemed by Procter and Gamble in Cincinnati, Ohio? A. That is the facilitating agency for it, yes.

Q. What area were those distributed in, sir? A. In Seattle, Portland—I am going to name the distributors and it covers Seattle, Portland, Atkinson-Lungren in Boise, Idaho, Spokane, and Salt Lake City, I believe, five distributors in the Northwestern part of the United States.

Q. Where else in the United States have you distributed these coupons, sir? A. You mean on the label?

Q. Yes. A. Where have we run that? Somebody will have to refresh my memory. We did run another one.

Q. Wichita, would that refresh your memory? A. No, not Wichita, I don't believe. I may stand corrected on it, but I don't think so. No, not Wichita.

Q. Now, have there been any coupons or price-off labels in Nashville or Chattanooga, Tennessee? A. Yes, in Chattanooga and Nashville.

Q. Were those coupons or price-off? A. They were price-off.

Q. Was there in San Francisco a price-off label? A. Yes, there was.

Q. Was there a coupon?

(Tr. p. 4988)

A. No coupon.

Q. May I suggest Kansas City to you, sir, as a cent-off coupon for Clorox? A. Newspaper, but not on the label.

Q. A coupon printed in the newspaper? A. Yes.

Q. And the housewife was to take that coupon to a grocery store? A. If she so elected.

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(Tr. p. 5006)

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Room 332
Federal Trade Commission
Washington, D. C.

Monday, 5 January 1959

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 5007)

PROCEEDINGS

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(Tr. p. 5010)

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Eric Bellingall

was called as a witness on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: Will you state your full name and address?

The Witness: Eric Bellingall.

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By Mr. Royall:

Q. Mr. Bellingall, you have given your name. What is your present occupation? A. I am a Vice President and Member of the Board of Directors of Honig, Cooper and Harrington and Miner, which is the advertising agency for the Clorox Company. Our headquarters are in San Francisco.

Q. How long have you been with that Company? A. Since 1947.

Q. Does the Honig, Cooper Company handle the Clorox account? A. Yes, it does.

Q. How long has it had this account?

(Tr. p. 5011)

A. Since 1928.

Q. Does the Honig, Cooper agency handle other accounts, whose products are distributed through grocery stores? A. Oh, yes. We have probably more than 50 accounts alto-

gether, and about 80 percent of our total billings are on products distributed through grocery stores.

Q. During your association with Honig Cooper Company, have you worked personally on the Clorox account? A. Yes, I have.

Q. Have you worked primarily on it? A. I have worked almost entirely on the Clorox account, beginning in 1947, in a creative and contact capacity, and since 1956 as the account supervisor.

Q. Have you been in charge and responsible for that account? A. Since 1956, yes.

Q. And before that time, state whether or not you were thoroughly familiar with it? A. Yes, I was.

Q. Now, what function does the Honig, Cooper Company perform in connection with the advertising and promoting of Clorox? A. Well, they function—the function that the agency has always performed for the Clorox account.

Q. Will you describe that?

(Tr. p. 5012)

A. It is our prime responsibility to recommend to the client the advertising and promotional programs which he should undertake and the expenditures which he should place against each one. We present these to the people in the advertising departments of the clients and then activate the programs in the field.

Hearing Examiner Haycraft: By "activate," you mean you secure the space, advertising space?

The Witness: Yes, sir; the agency has total responsibility for placing all the space orders and print orders, and things of that nature, engravings, plates, art work, all the things that go to make an advertisement and all the things that go to placing an advertisement are all done by the agency.

Hearing Examiner Haycraft: That includes both newspapers and magazines on one hand and television and radio as well?

The Witness: All media, sir; yes.

Hearing Examiner Haycraft: Go ahead.

By Mr. Royall:

Q. Now, Mr. Bellingall, in planning and recommending and effecting these programs, what information do you have available? A. Well, in addition to the normal information that any advertising agency would have, that is, media and marketing data and research information and so forth, because of the

(Tr. p. 5013)

strong package goods orientation of our particular shop, we have a field merchandising section, and this consists of a group of men who spend about one-third of their time in grocery stores. Their purpose is to check up on the in-store promotions that we are putting on for our clients, Clorox, and the other clients as well, to keep tabs on competitive merchandising activity at the store level and to observe generally what types of promotions are going on in the grocery field.

This group of men report back to the account supervisors, as a regular part of their duty, to keep them advised as to promotional activity in the field.

Q. Does this include also information about the competitive activities in the bleach industry? A. Oh, yes. In addition to the field checks that our own men make, Mr. Trimpe has broader reports coming in, that is, reports coming from more wide-spread areas, as to competitive bleach activity at the store level, and he in turn makes that available to us for our information.

We, ourselves, for years have maintained a clipping service, which has the function of clipping competitive bleach advertisements from print media and forwarding them to us on a regular basis.

Q. Do you have assistance—what assistance do you have from others members of the agency staff, in general?

(Tr. p. 5014)

A. Well, we have specialists in all departments and, in addition to TV, and copy, and the art, and radio and so forth, we have marketing people, who are specialists on the promotional aspects of marketing products through grocery outlets.

Our particular marketing director was formerly a sales manager of a large West Coast food company, for instance.

Q. Now, do these activities which you have described in general apply both to the services rendered to the Clorox Chemical Company and also to the present Clorox Company? A. Yes, there has been no change in that.

Q. Now, in your capacity with Honig, Cooper agency, state whether or not you have familiarized yourself with the history and development of Clorox advertising and promotional policies and practices, even prior to the time you worked on the account? A. Yes, I have.

Q. Why did you do that? A. I think it is probably standard procedure for any man coming in to work on an account, to familiarize himself with the history of that account, the type of advertising that it has used in the past, which forms of advertising and promotion have worked for them and use that as a taking-off place for further activity.

Q. Did you consider that necessary in order to properly

(Tr. p. 5015)

perform your functions? A. Yes, you would have been blind as to what had happened without it.

Q. Can you tell us briefly what, in general, Clorox' practices and policies are, from the time that Clorox was first marketed?

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(Tr. p. 5023)

By Mr. Royall:

Q. First describe what the circumstances were when you came? A. The situation when I came with Honig, Cooper in 1947 was that the account was using a combination of consumer advertising and sales promotion allowances. The recommendation that I made and that the agency effectuated shortly after I came there was that a change be made in the nature of the advertising, which heretofore had been largely educational in character, and it was our conviction that the bleach industry had matured at that time to the point where there was aggressive competition in most of the areas where we did business and our recommendation was to the effect that the advertising be changed from essential educational copy to more competitive copy, to make the brand less susceptible to the inroads of lower price competition.

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(Tr. p. 5024)

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Q. Were your recommendations followed? A. Yes, they were.

Q. How did they work out? A. Well, they worked out fairly well. In fact to the satisfaction of the client to the extent it was decided to take some of the funds that formerly had been going into promotional allowances, and

divert them to the new type of consumer advertising. This was done gradually at first and then with increasing weight, until it was completed in 1953, and at that time the promotional allowances were temporarily dropped in favor of a total expenditure in consumer advertising in support of the brand business.

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(Tr. p. 5025)

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Q.

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(Tr. p. 5026)

In 1955, did you make any recommendation for a change as between advertising and promotions? A. Yes.

Q. What was that change that you recommended? A. The change that we recommended was the introduction of national promotions for Clorox. May I go beyond that?

Q. That is enough for that question. Now, why did you recommend that?

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The Witness: We had in past years, sir, but not since 1953, when all of our expenditures had been devoted to consumer advertising, as against promotion. But in 1955 we discussed and recommended the return to promotion at a national level. By that I mean across the country.

Hearing Examiner Haycraft: All over the United States?

The Witness: Yes, sir.

Hearing Examiner Haycraft: National advertising campaign?

The Witness: Not only national advertising, but a national promotion and I am speaking now of merchandising activity in the stores, retail stores.

Hearing Examiner Haycraft: I see, that is by free

(Tr. p. 5027)

goods and things like that.

The Witness: It was not specifically of that character, but an in-store promotion.

Hearing Examiner Haycraft: All right. Now you may go ahead.

By Mr. Royall:

Q. Why did you recommend that change? A. Because after Mr. Trimpe——

Q. Leave out Mr. Trimpe. Why did you recommend that change? Did it have any relation to competitive activity?

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A. We did so on the basis of the increasing awareness on the part of the agency and the client of intensified competitive activity.

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(Tr. p. 5029)

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Q. Yes, it was my fault, for asking about the reasons before I asked you what you did. Now, I ask you, what were your reasons for making this change in which you put in these other promotions? A. Recommended and went ahead with the national promotions?

Q. Yes. A. Our reasons were to sustain the brand's position against what we considered to be intensified competitive activity and to give us, in particular, activity at the retail level, where we felt we were at some disadvantage with private labels, and lower-priced bleaches in particular.

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(Tr. p. 5030)

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Q. Now, in 1955, the period you were speaking of, did

(Tr. p. 5031)

Mr. Trimpe come to the company? A. Yes.

Q. Did you and Mr. Trimpe consider these matters and discuss them together? A. Yes, we did.

Q. What was the nature of the changes which you discussed and recommended? A. Well, Mr. Trimpe came in 1955—it was, I think, June. As soon as he had become acquainted with his sales force and the problems confronting them in various parts of the country, he entered into a series of discussions with the agency as to the nature of promotions that might best be utilized to combat competitive activity.

We discussed promotions with two major objectives in view, two different categories of promotions, actually—one, the national promotion I referred to previously, whose objectives were to provide a unified sales program for the selling force so they would have them all doing the same thing at the same time and give them something to rally around. We also hoped, by means of the nature of the national promotion that we did devise, to be able to lengthen the peak selling season, which traditionally in the liquid bleach industry peaks in late summer, and thus gain some volume increase.

We had another objective in view, which was the

(Tr. p. 5032)

development of promotions of a nature that would increase bleach usage by expanding the application of the product to, primarily, the non-laundering field such as housecleaning usage and so forth. That was the first category of promotion we discussed.

The second that I had referred to was Trimpe was par-

ticularly interested in having us develop some promotions that would be useful to him, to run on a small-scale basis, essentially, as counters to localized competitive activity, where we had a problem that was confined to a particular area, and where the nature of the promotion would be such it would be inappropriate for national use.

Q. This was in 1955, you say? A. That is correct.

Q. Let's first talk about these promotion plans on a national scale. Were any plans put into effect in that connection, and if so, when? A. Yes. The first one that went into effect, after Mr. Trimpe's arrival, was in the spring of 1956. Now, this particular promotion was what we termed a "nylon-rayon" promotion. It was based on research that had been conducted by the Clorox Chemical Company, which indicated that the product could be used beneficially on the new synthetics, which were becoming extremely popular then—nylon, rayon, dynel, acrilon, and so forth.

(Tr. p. 5033)

The purpose of the promotion was to get this idea across to housewives at the store level, the place where they normally went to buy their bleach, to advise them by all means possible that this product could be used on these new fabrics that they were buying in such quantities.

Q. Were any specific things done in the way of implementing this nylon-rayon promotion? A. Yes. We ran advertisements, advising the consumer of this new development, in our magazines and newspapers, and we promoted it extensively at the store level on a nation-wide basis. We had shelf talkers and reproductions of the advertisements and displays in the stores, and little recipes that the salesmen would get up on the shelf, so the woman could take one and it would advise her how to get stains out of nylon blouses and so forth, that type of material.

* * * * *

Q. I mean any material for use by the housewives, any rayon or any nylon material. A. Yes, I am referring specifically not only to the display material in the store, but the provision of these recipe slips—Clorox had a patented process for removing the yellowish cast that develops in all nylon after a

(Tr. p. 5034)

period of exposure to air, and the product is used with vinegar to remove this. Our research indicated it was quite a problem with housewives and we thought we had an advantage in being able to advise them how to get it out through the use of this product with ordinary household vinegar.

Q. You say this was effective in the spring of 1956. You planned it prior to that time, did you? A. Well, the research upon which this had been based was conducted in 1955.

Q. Did you work out, about that time, any additional promotions on a national scale? A. Yes, we did. The so-called nylon-rayon promotion was essentially a one-time affair, but Trimpe was particularly interested in having us develop a promotion on a national scale that could be repeated, so that it would be an annual or semi-annual activity, that he could direct all his salesmen's energies to, and our solution to that was the development of the fall and spring housecleaning promotions. The first of those we put into effect in the fall of 1956.

Q. The fall of 1956? A. Yes, sir.

Q. What was the purpose, what was your reason for this fall and spring housecleaning promotion? A. I may have to repeat some of the things I have said.

(Tr. p. 5035)

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Q. The reasons you gave, generally, for these promotions, nation-wide, are they applicable to this fall housecleaning thing? A. Yes. In fact, by lengthening the peak, I mean by having a spring and fall promotion, to start the ball rolling a little sooner and keep it rolling a little later, if possible, in the peak volume selling season. That was the selling strategy behind the thing.

Q. Was there any other general objective in these national-scale promotions? A. I may have touched on this. The nature of the promotion was such as to encourage a more diversified use of bleach, or to encourage the use of bleach for a multiplicity of purposes throughout the housecleaning range, in addition to the traditional laundering applications.

Hearing Examiner Haycraft: That was more educational?

The Witness: In that respect, yes. And we would support this in our consumer advertising, also, to that end.

By Mr. Royall:

Q. And that would apply to bleach generally? A. Oh, yes. Any time a major advertiser in the field

(Tr. p. 5036)

undertakes any educational work as to introducing new uses or encouraging additional uses of the product, all bleaches benefit thereby, because the housewives can buy at a lower price——

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(Tr. p. 5037)

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Q. Now I believe you said the first housecleaning cam-

paign was in the fall of 1956. When was that first planned and arranged? A. That would have been—we would have to work in the first quarter of 1956 in order to have a promotion in the market by the fall of 1956.

Q. Was that one in the fall of 1956 followed by a spring housecleaning promotion the next year? A. Yes, it is a concomitant part, to lengthen the selling season that occurred in the spring of 1957.

Q. When was the one in 1957 planned? A. For that we would have to start working in the latter part of 1956 in order to get the materials prepared and into the field in time.

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(Tr. p. 5039)

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Q. Are these fall and spring housecleaning programs continued to this time? A. Yes, since the first one in the fall of 1956, we have had a spring and fall one each year.

Q. And that was carried over into the Clorox Company, after the merger, is that correct? A. That is correct.

Q. Have there or have there not been some changes and refreshing of them? A. Yes. You have to keep doing something different to liven

(Tr. p. 5040)

up a promotion that is essentially of the same character, the theme and motif is changed for each promotion, and we have introduced a gimmick of the self-liquidating premium to give it another little consumer build-up. But the basic structure and concept of the promotion is as it was originally devised.

* * * *

Q. Now, has there been any national recognition of this spring housecleaning promotion? A. Yes, there has.

Mr. Royall: Your Honor, we are going to offer here a plaque and we were going to ask permission, after we offer

(Tr. p. 5041)

it, to substitute for it a photostat of it, and we have the photostat here, or a brochure containing a photostat.

Hearing Examiner Haycraft: We will mark that Respondent's exhibit 108 for identification.

(The document referred to was marked Respondent's exhibit 108 for identification.)

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Q. Now I hand you what purports to be a plaque, a copy of which has been stipulated to be correctly copied in the brochure which I will later hand to you; and I ask you: Was that awarded to the Clorox Chemical Company? A. Yes, it was, as a consequence of its promotion in the spring of 1957.

Q. Did you receive, or the Clorox Chemical Company receive, a plaque for the promotions during their tenure, that is, the housecleaning promotions? A. They received an award given to them by Food Field

(Tr. p. 5042)

Reporter, which is one of the leading trade publications in the grocery field, which had conducted a survey among grocers across the United States.

Hearing Examiner Haycraft: What period of time?

The Witness: It was for one of the top promotions of 1956-57.

By Mr. Royall:

Q. Did that cover the promotions prior to the acquisition? A. This covered specifically the spring housecleaning promotion of 1957.

Q. And is this, the paper I hand you, exhibit 108, a brochure dealing with that plaque? A. It is.

Hearing Examiner Haycraft: It is a photostatic copy of the plaque.

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(Tr. p. 5043)

VOIR DIRE EXAMINATION

By Mr. Tincher:

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Q. Was this the first such award that Clorox Chemical had ever won?

(Tr. p. 5044)

A. No, sir, it was not. We had previously won a similar award, but in a different category. This was for the best local, one of the best local advertising campaigns conducted.

Q. What year was that, sir, approximately? A. I would say about 1953, in that range. I could check and confirm the date for you.

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Hearing Examiner Haycraft: It will be received in evidence as Respondent's exhibit 108.

(The document referred to, heretofore marked Respondent's exhibit 108 for identification, was received in evidence.)

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(Tr. p. 5045)

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Go ahead, Mr. Royall.

DIRECT EXAMINATION (resumed)

Mr. Royall: Yes, sir.

By Mr. Royall:

Eric Bellingall—Direct

Q. Mr. Bellingall, have I asked you before the recess when the Fall '57 house cleaning promotion was planned? A. I believe you did, but in any event it would have to be planned and created in the first quarter of the year because of the lead time involved in preparing mechanically reproducing the materials involved.

Q. And did the Clorox Company for the year 1957-58 receive a similar award for this campaign? A. An award similar to the one which we discussed prior to the recess.

Hearing Examiner Haycraft: Is that for the spring of '58?

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The Witness: The first was for the Spring of 1957, your Honor; that is correct. This (indicating) is for the Spring of '58.

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(Tr. p. 5055)

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Q. Prior to the acquisition, how many promotional devices discussed by you and Mr. Trimpe in 1955 were put into effect? You said four? A. At the national level, four.

Q. Which were they? A. The nylon-rayon promotion in the spring of '56.

Q. And the three other spring cleaning ones? A. No, the fall house cleaning promotion in the fall of 1956; the spring house cleaning promotion, spring 1957; and the fall house cleaning promotion of 1957 which had been completed prior to the acquisition and the materials prepared.

Q. There were four promotions but two general types? A. Yes, sir.

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Eric Bellingall—Direct

(Tr. p. 5059)

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Q. Now, Mr. Bellingall, as to promotions that have been used by the Clorox Chemical Company and the Clorox Company since 1955, that is, both before and after the merger, did they involve any overall increase in spending by Clorox?

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The Witness: They represented a diversion of

(Tr. p. 5060)

monies from advertising to promotional purposes but didn't represent any additional rate per case increase in spending. That has been very stable for I believe—you mentioned '55, back beyond that period.

Q. How far back has it been substantially stable? A. Until well at least 1953, I believe.

Q. And what you say in the last couple of answers applies both to Clorox Chemical and Clorox Company, is that right, sir? A. Yes, sir.

Q. Now, prior to the acquisition, were your advertising expenditures spread evenly throughout the country? A. Well, as a general rule, but there were numerous exceptions to it. There would be areas where we would be confronted with a sales problem or a diminishing market share where more money would be expended on advertising than in other territories.

Q. During what period did those occasions particularly happen? A. Well, that would have been over an extended period of years.

Q. As far back as 1955? A. Yes, sir. Beyond that, as a matter of fact, and probably more so since then, after Mr. Trimpe came with the company.

Eric Bellingall—Direct

(Tr. p. 5061)

Q. Could you give an illustration of additional sums being spent in areas prior to the acquisition? A. Yes, sir. In the southeast territory—I am referring now to the southeast Nielsen territory—a group of six or seven states in the southeastern part of the United States—we had been confronted with a declining market share and as a consequence introduced radio in that area as a means of attempting to correct that problem.

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(Tr. p. 5062)

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Q. Did this likewise happen in preacquisition of promotional allowances? A. Yes, sir, from time to time, the promotional allowances were varied as to amount and the regions where they would be applied.

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(Tr. p. 5064)

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Q. Now has your policy with respect to advertising and promotion changed since August 1, 1957?

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(Tr. p. 5065)

A. No.

Hearing Examiner Haycraft: You may answer.

The Witness: I did, sir, no.

Hearing Examiner Haycraft: The policy hasn't changed, the implementation has changed, is that it?

The Witness: In some instances.

By Mr. Royall:

Q. Have you, Mr. Bellingall, since August 1, 1957,

recommended an increase in overall rate of spending per case for advertising and promotion? A. No.

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Q. Why have you not done so? A. Because we felt that the rate per case that we had been using previously was one that was serving the brand well. It had been developed through a number of years and had proved itself on this particular brand in its own industry to be adequate to get the volume increase that was required in an expanding market and to turn a profit. It is about the economic equilibrium we would seek on any account.

Hearing Examiner Haycraft: In other words, what you are saying is that it would represent a satisfactory

(Tr. p. 5066)

balance between the volume of sale and your advertising expenditures?

The Witness: Yes, sir, sir. It is an expenditure that our experience on the brand had indicated was adequate for the tasks confronting this brand in its own industry at this time.

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By Mr. Royall:

Q. State whether or not for Clorox the increased expenditure per case for advertising and promotion would have been or would be economically sound?

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(Tr. p. 5067)

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Hearing Examiner Haycraft: It goes to the weight, Mr. Tincher, rather than the admissibility. You see we do have a man here who, I think, you will concede, is an advertising expert.

Mr. Tincher: Yes, sir, sir.

Hearing Examiner Haycraft: He has been for years, determining this very question, how much money he can get out of an industry or out of a client to carry on, how much is necessary to promote and bring about a desired result of increased sales.

I think it is a proper question to ask him, whether or not an increase volume of increased money from this client would bring about better results. I think that is one thing I have to take into consideration in view of the allegations in the complaint. You may have somebody that says that it will and this man says that it won't. All right, you may answer.

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(Tr. p. 5068)

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The Witness: Well, we didn't think so, Your Honor, no.

By Mr. Royall:

Q. Do you think so now? A. No.

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The Witness: I am talking about—let me make this clear. We develop an increased expenditure, sir, as the brand moves ahead with volume increases. We have not recommended an increased rate of expenditure per case.

Hearing Examiner Haycraft: I don't think I understand your answer. You are saying in one breath that you have recommended increase, and then you say you haven't.

The Witness: No, sir, we have recommended no increase, nor did we think one was desirable nor do we think one is desirable now on the rate of spending per case.

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Eric Bellingall—Direct

(Tr. p. 5069)

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By Mr. Royall:

Q. Now, Mr. Bellingall, will the amount of advertising and

(Tr. p. 5070)

promotion expenditures suitable for Clorox be the same as that suitable for other grocery products?

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The Witness: I don't think so at all. I don't see how the amount that we spend on Clorox, which is a rate of spending that we have come to through some years of development on the account, could be transferred categorically to any other product even in its own industry, let alone in another. Did you say, "Grocery products?"

Mr. Royall: Grocery.

The Witness: I think from my experience in our own agency, each brand in its own industry meets its own competition, has its own rate of turnover, and the rate of spending that can economically be attributed to that brand is unique to the brand in its time and place and marketing circumstances and would not necessarily be applicable to any other brand in another industry.

(Tr. p. 5071)

Hearing Examiner Haycraft: Is it your opinion that competitive resistance determines to any great extent the amount that you spend per case or per unit in any given situation?

The Witness: Well, competitive resistance, sir, could have, obviously, a bearing on your position in a given industry, that is, what your total case average would be and what your total expenditure could economically be based on your case sales.

Hearing Examiner Haycraft: That wouldn't have to do with the rate per case?

The Witness: Well, the rate per case is really more a function of manufacturing costs and the profit that can be extracted and the amount available for advertising purposes.

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(Tr. p. 5072)

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By Mr. Royall:

Q. But based on your experience with the Clorox Chemical Company and the Clorox Company, do you know of any reason why this per-case expenditure, which you say is uniform over several years, why it should be changed?

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The Witness: No, I do not.

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(Tr. p. 5073)

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Q. Now, were your recommendations for expenditures, which were made to the Clorox Chemical Company, influenced in any way by any restriction based on lack of funds of the Clorox Chemical Company? A. No. We knew that the Company had adequate financial reserves. We were never pinched in that direction. I have tried to make clear that the rate per case that we have used on this brand is one that has developed over a period of years from experience in this industry with this product. And it has proved satisfactory, and as long as it continues to prove satisfactory, there is more reason for staying with it than there is for going away from it.

Q. Have your recommendations as to the types of promo-

tions to be utilized by the Clorox Company been affected in any way by the acquisition? A. No, the types of promotions that we have employed since the acquisition were thoroughly known to us.

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Q. Were there any new competitive conditions which occurred after the merger which made it desirable from your standpoint

(Tr. p. 5074)

as the advertising executive for Clorox to use some of the promotions, which you mentioned in your last answer?

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Q. What were some of these competitive conditions?

Hearing Examiner Haycraft: He didn't answer.

Mr. Royall: Yes, he did.

The Witness: Did you hear me?

The reporter will know.

I said "yes."

The primary change in our competitive situation and the period immediately following the merger was the introduction of a new line of packages by our major competitor.

Another factor would have been the growth of private labeled brands throughout the country.

By Mr. Royall:

Q. Now, has Clorox been sampled? A. No.

Q. Have you recommended any sampling? A. No. Clorox isn't the kind of product that lends itself to sampling.

Q. Why? A. Well, it is bulky, it is heavy, there is a breakage factor,

(Tr. p. 5075)

it is awkward for people to deliver. You can't handle the product on a ring-and-leave basis. I am sorry—this is, ring the doorbell, drop the sample and go.

The Witness: What I mean, your Honor, is that due to the chemical nature of the product, it could not be left untended at a doorstep where a child could get at it, or the old man could trip over it, or something.

It is something that is unmailable, and it is in a field where there is no advantage to a one-shot sample. I would think it would be about as less desirable a product for sampling as you could imagine.

By Mr. Royall:

Q. Now, Mr. Bellingall, did you recommend the use of television and radio spots for the Clorox Chemical Company? A. Yes, both.

Q. And were both adopted? A. Yes.

Q. Why did you recommend radio? A. I may have——

Q. And under what circumstances? A. I may have touched upon this previously.

Q. Yes, sir. A. Radio was recommended as a consequence of the problem brought to our attention by Mr. Trimpe of declining market share in the Southeast, based on the Nielsen reports.

(Tr. p. 5076)

Q. Did you stop it? A. Yes, we did. We ran it, I think, for, I think at least a year, and then cancelled the radio program.

Q. And why? A. We could adduce no evidence that it was doing any good.

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The Witness: When I said "program," I meant our program of radio spots. This was not a sponsored show.

Hearing Examiner Haycraft: Not sponsored?

The Witness: No, sir.

Hearing Examiner Haycraft: Was it your opinion, then, that radio spot has no effective advertising value?

The Witness: No, sir; I would not generalize like that from a specific instance. Our analysis of the situation was that possibly our normal media program in the Southeast had neglected a sufficient penetration of the Negro market, that perhaps they weren't being adequately reached and the magazines and newspapers and television that we were employing.

There is a fairly low incidence of TV ownership, for instance, among certain groups, and we felt that radio would be a proper means to reach this market, and initially started out employing disc jockies with spot announcements, so that

(Tr. p. 5077)

they could interpolate their own personality into the selling message.

We stopped that after a while, and moved it over to general radio, rather than the group-type of radio approach, and our conclusion was that neither was effective, or not as effective as we wanted it to be and we cancelled out the regional radio programming that we had used.

By Mr. Royall:

Q. Mr. Bellingall, as to TV spots, do you know whether or not local manufacturers can obtain TV spots at a rate lower than a national manufacturer must pay? A. In numerous instances, they can, yes.

Q. Even in Cincinnati? A. WLW-TV happens to be

one of the stations that does have a local rate card that is lower than its rate card for national advertising.

Q. And you have other illustrations of that, do you? A. Yes, there are plenty of them.

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Q. Now, have the costs of the type of advertising you do for Clorox increased in 1958 over what they were in 1957?

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(Tr. p. 5078)

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The Witness: They have increased.

By Mr. Royall:

Q. And about how much? A. Well, our media department figures on the basis of rate increases that flow in to them all the time in their normal course of business——

Q. What would it be, approximately? A. Six or seven percent. That is '58 over '57.

Q. That is right.

Now, there has been some testimony in this case that CBS stations were dropped by Clorox in favor of NBC stations.

Is that correct? A. Yes.

Q. Why was it done? A. The day-time audience on the basis of rating services had switched over to NBC, so we put our spots where the people were.

Mr. Tincher: Radio or TV?

The Witness: This is television I am referring to.

(Tr. p. 5079)

Mr. Royall: Television spots you are talking about?

The Witness: That is correct; not radio.

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Eric Bellingall—Direct

(Tr. p. 5081)

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Q. Now, Mr. Bellingall, except for the spring and fall housecleaning promotions, have you recommended any tie-in between Clorox and other nationally-advertised products? A. Not between Clorox and any other nationally-advertised products, no.

(Tr. p. 5082)

Q. Do you so recommend now?

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A. No, we don't.

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Q. Why not?

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A. We have been offered such tie-ins in the past by other companies coming to us wondering if we would like to tie in in an advertising and promotional sense with their product. Our attitude then, and it is the same now, has been that Clorox is in a position of being a prestige bleach in its own field, that it has very little to gain and might have something to lose in splitting the advertising impact and impression with another product. We have preferred to maintain the identity of the brand by itself, and the promotional moneys and advertising moneys that we have available go in to that brand rather than diffusing the image between two brands.

There are other aspects to it, one of them being flexibllity. When you tie yourself in with another brand like that, this is generally a long-range thing that you have to commit yourself for, and then if something goes sour in between times, you are still on the hook with

(Tr. p. 5083)

something that might no longer be applicable to your current marketing condition.

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Q. In spring and fall housecleaning, I believe you do have tie-ins with products, do you not? A. That is correct.

Q. And what type of products have you recommended to tie in with?

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A. The merchandising basis of our fall and spring house-

(Tr. p. 5084)

cleaning promotions, your Honor, has always been that the way we can get the best grocery cooperation for our product—and a specific instance of that would be a mass display of it in a store—would be to sell the grocer on the idea that Clorox is a high velocity, quick turn-over item, a traffic builder, the housewife is back there every week or ten days to pick this thing up, to use this as a traffic builder to other items that she would visit normally only rarely, brooms, mops, pails, waxes, the other items in his household supplies cleaning section. That is the marketing basis of the spring and fall housecleaning promotion.

We are not concerned here with brand image diffusion because our recommendation is that it not be done with a nationally-advertised product. We prefer the unbranded or locally-known merchandise for this purpose.

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(Tr. p. 5086)

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Q. Now, Mr. Bellingall, getting back to your own spring and fall housecleaning itself, I hand you Complainant's

Exhibit 214 and ask you whether or not it correctly portrays the tie-ins that are utilized in those housecleaning campaigns?

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(Tr. p. 5088)

The Witness: Yes, sir, it does, this represents the type of tie-ins I have described and it has been a basic part of this spring and fall housecleaning promotions.

By Mr. Royall:

Q. Now, Mr. Bellingall, would the identification of Clorox with the name "Procter and Gamble" be of any benefit to Clorox from an advertising and promotional standpoint?

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The Witness: I don't think there would be any sales rub-off on Clorox due to its association with Procter and Gamble.

Hearing Examiner Haycraft: You don't think Procter

(Tr. p. 5089)

& Gamble is a bigger drawing card to the housewife than Clorox?

The Witness: In the bleach field, certainly not, but more important than that——

Hearing Examiner Haycraft: Do you think that a housewife makes up categories herein, and puts bleach in one partition, and flour in another, and soap in another, and says, I have listened to this one division, and in another division, and so on?

The Witness: No, sir, but I think she has brands in each of those divisions and is not swayed in her purchases by the fact that a company runs those divisions. A housewife buys a brand not a company. I seriously question that if you got 100 women in this room and asked them who

made Dash and Cascade and Fab and Cheer, that you would have any reasonable response of accuracy. She buys the product that serves her purposes and she is buying a brand on a package without respect to who makes the things.

Hearing Examiner Haycraft: How about the reputation Procter and Gamble has in the years of making products to use in the kitchen, to use so and so, does it have any value at all in another field?

The Witness: No, sir. No. I think the prestige of clorox in the liquid bleach field is far greater than Procter & Gamble's name in that field.

(Tr. p. 5090)

I believe that is true.

Hearing Examiner Haycraft: Of course, Procter and Gamble has not been in that field. I agree to that, but do you mean by that that the housewife does not sufficiently associate Procter & Gamble with cleaning?

The Witness: I don't think the housewife sufficiently associates—I should not say sufficiently—I don't think the housewife associates the word "Procter & Gamble" with most of the Procter and Gamble brands. She buys the brands, not the company name.

Hearing Examiner Haycraft: She does not care who makes them?

The Witness: I don't think she knows who makes it. I don't think she knows most of the soaps and toilet goods products she buys, whether Lever makes it or Colgate makes it or Procter and Gamble or whoever. She is buying the brand name on the package, that is the physical entity that exists in her world that she works with every day, and the company is a remote thing generally unknown.

Hearing Examiner Haycraft: In other words, from your

experience, your interpretation, it is a myth that Procter & Gamble has a reputation as a manufacturer of soaps, as far as the housewife is concerned?

The Witness: I don't say it is a myth that the company has a reputation. I am saying it would be that the

(Tr. p. 5091)

woman doesn't associate the manufacturer with the product.

Hearing Examiner Haycraft: How does she know about the manufacturer if she doesn't associate it with the product.

The Witness: I think we are asking two separate questions. If you were to ask a woman, do you think that Procter & Gamble is a good reputable company, you would probably get a fair positive response to it, and my contention is that if you ask them, does Procter & Gamble make Vel, you would get answers all over the lot, because they don't tie the brand back to the organization that produces it. She probably thinks Colgate is a nice company too, and Lever, but there is no identification of brand with the company, unless a company knocks itself out to attempt to achieve it.

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(Tr. p. 5092)

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By Mr. Royall:

Q. Mr. Bellingall, I believe before the adjournment there was a discussion about the identification of the name of Procter and Gamble with Clorox. Did you at any time recommend the identification of the two as a matter of advertising or promotion? A. No.

Q. Was it ever suggested to you that that be done?

A. Never.

Q. Not by any source? A. No.

Q. There has been some testimony about a price-off offer. Have you recommended that Clorox increase this type of activity? A. No.

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(Tr. p. 5094)

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Q: Why have you not recommended the increase in this type of activity? A. Because the too frequent use of a cents-off device tends to break down your basic price structure, to cheapen the product in the eye of the consumer and by that cause a loss in the prestige of the product. When they become too accustomed to paying a lower price for it, it is very difficult to get them back to the basic price, the real price of the product.

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(Tr. p. 5095)

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Q. I hand you Commission Exhibit 538, which purports to show the number of 20-second and one-minute spots used by Clorox Chemical and Clorox during the periods indicated on the exhibit. Have you analyzed those figures from the standpoint of determining the relative frequency of the two types of spots? A. Yes, I have.

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(Tr. p. 5096)

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Q. Does this show that Clorox Chemical began using, at one time, a greater number of one-minute spots than they did 20-second spots? A. It shows—yes, that is correct.

Q. Can you tell us why Clorox Chemical, prior to the

merger, began using a proportionately greater number of one-minute spots? A. Yes.

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(Tr. p. 5097)

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The Witness: That was done because in the agency's opinion—this is primarily the creative department's feeling—the one-minute spots make a better vehicle for the type of selling story we have to get across than do the 20-second commercials.

Hearing Examiner Haycraft: It is three times as long.

The Witness: It gives us more elbow room in which to tell the story, sir.

By Mr. Royall:

Q. Has that trend of more minute spots in relation to

(Tr. p. 5098)

20-second spots continued? A. It has been continued, yes.

Hearing Examiner Haycraft: Can you tell when it was you made this change of increasing from 20-second to minute spots?

The Witness: It would be about June or July of 1957 that we were able to procure more minute spots than 20 second.

Hearing Examiner Haycraft: In other words, just prior to the merger then, is that right?

The Witness: Sometime prior to the merger, yes, sir.

Hearing Examiner Haycraft: You say June or July and the merger was in August, wasn't it?

The Witness: That is correct.

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The Witness: May I amplify that, sir?

Hearing Examiner Haycraft: Yes.

The Witness: Initially we wanted—in the beginning, our idea was to have more minutes than 20-seconds. The type of television that we are using, spot TV,

(Tr. p. 5099)

you have to start a program, pick up whatever availabilities there are and gradually refine it to the end purpose for which you want the thing.

Now, initially it was difficult for us to get the one-minute placements that we required. 20 seconds were more readily available. We were constantly working to refine that thing, so we would have a greater proportion of minute commercials, versus 20 seconds and that cross-over point occurred, as I say, I would have to establish the date for you, but I believe it was about June of 1957.

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(Tr. p. 5101)

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Q. Now, is the total number of seconds indicative of the relative value or cost of the two types of spots? A. No.

Q. Was the comparative cost between a one-minute and 20-second spot, what is that?

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A. Minutes and 20s cost about the same. In fact, in most stations they cost the same amount of money.

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(Tr. p. 5102)

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Q. Now, Mr. Bellingall, as between TV spots, and network TV, which is preferable for Clorox advertising?

A. TV spots, as far as we are concerned. That is what we are using.

Q. Why? A. Because the flexibility of the spot TV enables you to adjust your advertising weight to the regional character of the market. On spot TV, for instance, we can put a certain amount of advertising impressions into a good market, such as New York, and not have to put the same amount of impressions into a very weak market, such as Milwaukee or Minneapolis. We can adjust the advertising expenditure, and the advertising penetration, to the local marketing circumstance.

Hearing Examiner Haycraft: Do I understand you correctly then, that you spend more money where you have a good market than where you have a poor one?

The Witness: We adjust our advertising expenditures quite frequently that way.

Hearing Examiner Haycraft: That is sort of a revelation to me. I would think you would spend more money where you are trying to build up a market. Why is it

(Tr. p. 5103)

that you spend more money in advertising where you have a big market than a small one?

The Witness: To support the business you have, sir, to protect the business you have. Under no circumstances would we spend, in Minneapolis, for instance, what we spend in New York, even a part——

Hearing Examiner Haycraft: Is that because you feel that regardless of the amount of money you spent there, you had a local situation you couldn't overcome?

The Witness: In many instances, that would be the case. In some circumstances we have attempted additional spending, in some of the poorer markets as a means of improving them. I think I mentioned the radio thing this morning.

But basically, where you have a good market, you tend to spend in support of it.

Hearing Examiner Haycraft: By a "good market," do you mean where your product has a good reputation and your sales have been increasing in proportion to the increased expenditures for advertising?

The Witness: Roughly, yes.

Hearing Examiner Haycraft: But when you run into such situations, local situations, such as Minneapolis, where I think there is a local manufacturer—isn't there?

The Witness: Hilex has marketed in that territory.

Hearing Examiner Haycraft: Instead of trying to

(Tr. p. 5104)

break into that market, with your promotion, you sort of by-pass it; is that it?

The Witness: In effect, that is—in the past, we have attempted to do something about this, with additional expenditures. It has been an unresponsive market, to that kind of treatment. The same amount of money, expended in a market where you have good consumer acceptance, can very often deliver you a better return.

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(Tr. p. 5108)

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Q. Mr. Bellingall, even if the periods shown on Exhibit 546 were comparable, would the exhibit itself disclose or indicate the comparative cost and comparative value of these newspaper insertions? A. No, it would not.

Q. Why? A. Because when you reduce two newspaper schedules to the common denominator of number of lines, it fails to take into consideration the effectiveness and the circulation of the different newspapers that went

into that compilation, and it also fails to take into consideration the cost of the two different schedules.

As an example, a thousand-line ad, from one period, would be worth a thousand lines, according to this computation, and a thousand-line ad from the '58 period would also count as a thousand lines, but if one of those thousand-line ads were in the Albuquerque Bugle, and the other in the New York News, obviously in terms of their comparative value or cost, they are not comparable.

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(Tr. p. 5121)

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Q. Now, the record shows at page 2366, of the transcript, that Mr. Kunin of Hood Chemical, referring to Clorox, mentioned that the manufacturers who consistently advertised in newspapers 52 weeks a year, had the advantage of strengthening his market position.

Can you tell how many days a year Clorox advertises in newspapers in Mr. Kunin's territory?

Hearing Examiner Haycraft: Where is his territory?

Mr. Royall: Philadelphia.

The Witness: In Philadelphia we advertise in 3 newspapers and in the fiscal year ending June '58 we advertised a total of 17 days during the year.

By Mr. Royall:

Q. Since the acquisition, Mr. Bellingall, have any suggestions been made, directly or indirectly to you, by Procter & Gamble, that Clorox spend more money in advertising and promotion than you have recommended? A. No, they have not.

Q. Has any suggestion been made indirectly or directly to you by Procter & Gamble that during this litigation you

should limit or hold back any advertising and promotional activities which you thought desirable? A. No.

(Tr. p. 5122)

Q. Has any such suggestion been made to you by anyone in Clorox? A. No.

Q. Or by anyone else? A. No.

Q. Have you limited or cut down in any way your recommendations as to Clorox' advertising and promotional activity because of the pendency of this litigation? A. No, we think we have promoted the product very aggressively, as a matter of fact. I hope we have.

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(Tr. p. 5145)

Mr. Royall:

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(Tr. p. 5146)

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As a matter of fact, the government has asked us in written memorandum and orally to withdraw objections which we have already withdrawn and appear in the record to have been withdrawn, and they made the thing almost unintelligible.

We are almost tempted to raise a question of whether, in view of these developments, the withdrawals shouldn't be withdrawn, but we are not going to do that. From the list which the complainants have mentioned in their correspondence and conversation on the record, we, as a matter of good grace and under no obligation, will withdraw the following: Transcript 1701, lines 3 to 14; Transcript 1721, lines 8 to 10; Transcript 3197, lines 8 to 19; Transcript 3260, line 2; but we do this on the condition and with the qualification I have heretofore mentioned and

with no implication that any other withdrawals will be made by us.

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(Tr. p. 5158)

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Room 332
Federal Trade Commission
Washington, D. C.

Met, pursuant to adjournment, at 10:05 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 5159)

PROCEEDINGS

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Eric Bellingall

resumed the stand as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (resumed)

Hearing Examiner Haycraft: As a result of considerable thought on the matter we were discussing yesterday, while I still feel I am right, I think probably in order to get the picture before the Commission so that the Commission will be able to pass on it, with all the facts before it, I am going to reverse my ruling to this extent, that I will allow Commission's counsel to cross-examine the witness on the offer of proof, that is, the facts that were set out in the offer of proof and let the offer of proof and the cross examination stay in the record subject to a motion to

strike at the end of the case and then at that time both your direct examination and his cross-examination will be in there and then there will be no question of having to come back again to take the testimony, if the Commission says I was wrong.

In other words, it is a little more than an offer of proof because by allowing counsel in support of the

(Tr. p. 5160)

complaint to cross-examine the witness, you will have both sides. In other words, he may question the witness as to what was actually said and done and so forth.

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(Tr. p. 5161)

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Hearing Examiner Haycraft: All right.

It might be a good idea, also, in order to expedite it, for you to ask him one question, the thing that I summarized as your offer yesterday, to get it in here now in the direct testimony. I am sure from your notes you can frame the question as you covered the whole thing.

Mr. Royall: I am going to ask him these new questions, your Honor.

Hearing Examiner Haycraft: All right.

By Mr. Royall:

Q. Mr. Bellingall, in the transcript of yesterday you testified that certain countering local or regional promotions were used after the acquisition but had not been used before. Why were they not used, not implemented before

(Tr. p. 5162)

the acquisition?

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The Witness: Because the types of circumstances for which these promotions had been planned had not, in our opinion arisen during the period referred to.

By Mr. Royall:

Q. Was it your general policy to use counter promotions, or was that done only where specific circumstances made it seem necessary to you? A. I think the name "counter" carries the key to that. You don't use a counter promotion in a general sense. By that I mean, in a broad-scale sense. It is a different breed of cat, a different type of promotional device from the national things that we had been using. We use them only when a specific circumstance—by that I mean the threat of competitive activity in a localized area causes a counter effort to prevent erosion of your marketing

(Tr. p. 5163)

position in that area.

Q. Did the implementation of these plans after the acquisition in any way increase the per share expenditure for advertising and promotions, per case?

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A. No, they did not. We spent at the same rate per case, if that was your question, before and after.

Q. Now, referring again to these local or regional counter promotions, had anything been done as to those before the acquisition? A. Yes.

Q. What? A. Well, we planned them; we evaluated them; that is, considered the respective merits of one type of promotion versus another, and there are sort of circumstances under which each one might be applied.

Perhaps, more specifically, for instance, we had designed cents-off labels which were furnished to the client indi-

cating the precise manner in which the label would have to be redesigned in order to accommodate this cents-off

(Tr. p. 5164)

device. We alerted our premium section to dig up premiums that would be suitable to this type of product.

Mr. Trimpe sent over to us materials and promotional devices that he thought might be of interest. I remember one, one of the Stokely-Van Camp materials. I think it was a kind of beans that had a self-liquidating premium of personalized stationery on it. We rejected that one as not being appropriate to our type of product.

Another thing that we considered was the use of a nylon diaper cover. This was back in the time, as I had previously related, when we had a nylon-rayon promotion and thought there would be appropriateness to tying in with this. We checked this out through one of our creative people with the store buyers in San Francisco department stores to determine if there was any wide-spread consumer interest in this type of product. Apparently it wasn't an item that women were responding to very much, so we dropped that one.

Another device was a dish cloth that we had considered as early as 1955, not as a self-liquidating item, but as a free premium, a give-away with the product. We didn't use it at that time; we weren't confronted with a situation that we thought called for it. But later on, when a more acute situation arose in Los Angeles, we did use a dish cloth free premium.

(Tr. p. 5165)

Q. Now, as the reasons why you didn't use them before the acquisition, the same as you previously stated, there was nothing that arose that required it? A. That is correct. That is right.

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(Tr. p. 5167)

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By Mr. Royall:

Q. In your discussions with Mr. Trimpe, in 1955, which you have previously referred to, did you in addition to the nation-wide promotions which you have previously mentioned, also consider and discuss and plan for possible use for countering purposes any other promotions? A. Yes.

Q. And would you name such other promotions? A. The types of localized counter promotions that we had considered had been the one-cent sale, the dealer premium, the free merchandise pack, couponing devices, newspapers

(Tr. p. 5168)

and couponing on the bottle, again, self-liquidating premiums, and contests. I think those are the only ones.

Q. Did you refer to price-off labels? A. Price-off labels, definitely; yes.

Q. Now, did you at any time thereafter and, say in the year '56, consider with Mr. Trimpe the type or label on a new type bottle? A. Yes.

Q. When was that? A. That was in 1956 as a consequence of a competitor coming out with a new bottle size. We reacted to this with a development of such a bottle ourselves which necessarily incurred the development of a special label for that bottle since it was a size that had not heretofore been in the Company's line.

Q. Now, were the bottles also actually manufactured? A. Yes.

Q. Were they ever used? A. No, they were not put on the market place.

Q. Why? A. Because in the time between the competitive introduction of this special size and the Clorox

Chemical Company's development of its own bottle sufficient evidence had arisen that there was a great deal of resistance on the part of the grocery trade to carrying this additional size, and

(Tr. p. 5169)

therefore, it was our judgment that we should not go ahead and try and introduce this new bottle, it was a three-quart size, into the market.

Q. That was despite what you made preparations for? A. That was correct.

Q. That was a three-quart bottle, you said? A. Three-quart.

Mr. Royall: Your Honor, that is the only questions I have.

CROSS-EXAMINATION

By Mr. Tincher:

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(Tr. p. 5179)

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Q. Now you also said at that page there was aggressive competition in most of the area in 1947. Who was that aggressive competition? A. Well, traditionally, our most aggressive competitor has been Purex.

Q. And that was true in 1947? A. Yes, that is right.

(Tr. p. 5180)

Hearing Examiner Haycraft: Purex was not in all your markets?

The Witness: No, sir, I couldn't give you a percentage breakdown as of 1947. I think that at the present time, they meet us in somewhere in about 45 percent, in the areas where 45 percent of our business is derived, and it would have been, I think, substantially the same percentage

at that time. Now in addition to Purex, of course, there were other competitors. Hilex, in Minneapolis, was stronger than we then, and still is. Linco has traditionally been a strong and aggressive competitor in the Chicago-Milwaukee area. Roman Cleanser would be another product that started in Detroit, and moved out and gained additional areas and has been a strong competitor. A. Sani-Clor is a——

Q. You understand you are talking only about 1947? A. Yes, and there would be others.

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(Tr. p. 5187)

By Mr. Tincher:

Q. Now you testified yesterday, sir, that you took funds going into promotional allowances and converted them into new competitive advertising. Do you recall that? A. Yes, I do.

Q. What is competitive advertising as distinguished from the type that was being used? A. My reference to the term "competitive advertising" was as distinguished from advertising that was more educational in character. This was essentially the major company change that was initiated shortly after I came in the company, and I came there in 1947. The difference is this: Educational advertising is more to educate the consumer to new uses of the product and by competitive advertising, I mean advertising directed at establishing the superiority of the product over other brands in its market. One tends to promote the sale of bleach, per se, the other has greater emphasis upon a particularized brand of bleach. That was the frame of reference in which I was speaking.

Q. Well, which is the nylon-rayon advertising that was engaged in? A. The nylon-rayon advertising, we at-

tempted to make just as competitive as we could, because we wanted to attribute this newly discovered consumer benefit as much to our product as we could. In fact, there was a patent applied

(Tr. p. 5188)

for in connection with the ability of Clorox to get out this yellowing effect that nylon is subject to, and we did, working from that springboard, try to make a claim, as exclusive and beneficial to our own brand as we could.

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Q. Mr. Bellingall, this patent that was applied for, was in reality a patent on a recipe of mixing Clorox with vinegar, was it not? A. That is correct.

Q. It was not on the Clorox product itself? A. No, it was on the combination of the use of Clorox with vinegar, to whatever was in the vinegar, ascetic acid or something, that together worked to get this yellowing tinge out of any nylon. I remember at that time, that chemists from DuPont, which was a primary source of the nylon material,

(Tr. p. 5189)

came out to Clorox to investigate this thing, and were surprised and pleased that so simple a device had been devised to rid them of a problem that had apparently been quite a persistent one.

Q. Was that recipe something developed by Clorox research? A. Yes.

Q. And whose department would that Clorox research be? A. At that time that would have been Mr. Larry Barton, who was the vice president in charge of their technical work.

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(Tr. p. 5190)

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Q. Now, in 1955, what was this intensified competitive activity and who was engaging in it? A. It was felt by us, primarily from Purex in many of the areas, where we meet Purex—I say "many"—in some of the areas in which we meet Purex, they occupy a superior market position to us. In particular, in the Pacific Northwest, they had been giving us a bad time. They had a better share of the market in Los Angeles, which was one of their home territories, or at least where they began. We had observed an intensified use of certain promotional devices.

I remember at that time they had been, let me see, this is 1955——

Q. Yes, sir; that is what you testified to. A. (Continuing) ——using in San Francisco, and I think that was the year or just about that time, a cash give-away contest wherein the first thousand people to write in in response to some newspaper advertisement that they ran, would get a dollar. I think it was suggested a new use for Purex, and the first thousand to write in got a dollar and a coupon, something of that type.

The competitive activity, of course, wasn't confined to that one brand, I could get other instances.

Q. Yes, let's have all these instances, which were causing

(Tr. p. 5191)

this intensified competitive activity in 1955? A. The other area of intensified activity that I mentioned there was that of the growth that the private label thing. We had become increasingly aware, as a consequence of Clorox distributors and their salesmen sending in reports from the field that the private label problem was a developing one,

and this was a matter of deep concern to the Clorox Chemical Company because of its obvious implications.

The manufacture of a private label normally sells at a considerable price differential and since he is controlling the outlet, as well as the brand, is in a position to give it favorable promotional backing in the store and additional shelf space.

Q. How do you know that, sir, that it is given favorable shelf space? A. I think that is a common-place—I don't know the precise date when I first came to that knowledge, but we are—I have been aware of this for some time.

Q. Was it through your own organization or the Clorox organization? A. Yes, I have indicated some of the sources that we have for getting this information about in-store activity. It is quite general, I think, for a private label to receive a share of shelf space that is greater, as a rule, than its consumer demand would require.

(Tr. p. 5192)

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Hearing Examiner Haycraft: How do you know what the private brand sales were?

The Witness: Well, that is a pretty good question, your Honor. I can give you an instance of that. There is a supermarket about a block from our office in San Francisco, it is called the "Big Boy Supermarket." They have a label that is sold only in that store, and we have observed occasions in the past where they have had a ratio of six to one over us in shelf space, and I have much doubt that they would have any such ratio in terms of sale.

Hearing Examiner Haycraft: You might very well doubt that, but what do you know about it?

The Witness: I do not have sales figures.

Hearing Examiner Haycraft: In other words, you have formed that opinion based on your observation without knowing what the actual sales figures were for the various stores?

(Tr. p. 5193)

The Witness: That is right, yes.

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(Tr. p. 5196)

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Q. Now, do I understand correctly that the only promotions which have been used subsequent to August 1, 1957, by the Clorox Company are coupons, either on the bottle or in newspapers, self-liquidating premiums, dish cloth premiums and price-off labels? A. And the national promotions that we had mentioned previously, that were subsequent to 1957.

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The Witness: Let's see, we have self-liquidating

(Tr. p. 5197)

premiums, the merchandise premium, the price-off labels, and coupons. I believe those are the only forms of promotion we have used since that date.

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(Tr. p. 5198)

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Q. Mr. Bellingall, let's talk for a while now about coupons used since August 1, 1957. Where had coupons been used?

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A. I would have to check the distributor's territory. I don't commit this detail to mind, but we have used a coupon on the label, "Good on the next purchase of a bottle

of Clorox," and have used, in addition, a newspaper coupon good on the current purchase of a bottle of Clorox. The coupon on the label was used in some of the Pacific Northwest territories, and a newspaper coupon—I would have to check as to the area where we used that.

By Mr. Tincher:

Q. Now, this newspaper coupon, was that a coupon for eight cents off? A. The eight cents off, my recollection, the eight cents off is the label coupon, good on the purchase of your next bottle of Clorox.

Q. And then did the grocer get that eight cents off plus

(Tr. p. 5199)

two cents for handling the coupon? A. Whatever the standard redemption rate is. I think it is at the two-cent level.

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(Tr. p. 5200)

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Q. Was this eight-cent coupon used other than the Pacific Northwest? A. It may have been. I can get that for you if you want.

Q. Why was it used in the Pacific Northwest? A. It was used as a counter to the introduction of the new Purex bottle up in that territory. We had troubles enough without that.

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(Tr. p. 5202)

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Q. All right, now, you said something about newspaper coupons. You didn't know where they were used; is that right?

(Tr. p. 5203)

A. We have run a newspaper coupon in this first half. I don't recall the distributed territory in which we did it.

Q. And was that an eight-cent coupon, also? A. I don't remember.

Q. What was supposed to happen with this coupon? A. That is a coupon run in a newspaper advertisement. The housewife clips it out of the newspaper, takes it to the store and redeems it on the initial purchase of a bottle of Clorox.

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Q. You don't know the area, so you don't know why you ran it. Or do you know why you ran it? A. Yes, I know why all the coupon things were run. We had these three or four separate promotional devices, not only this coupon on the bottle and the newspaper coupon, but the price-off label, and the merchandising pack, and the self-liquidating premium that had been mentioned, and these were put on at different localized areas throughout the country as Purex introduced its new bottle into that territory.

Q. Well, that is what I am trying to find out, sir. Were all these post-acquisition promotions of couponing and the

(Tr. p. 5204)

local and regional type promotions, are those all aimed at Purex? A. No, there is an exception to that. We had a price-off label—this was five cents on gallons—that we ran and I think in nine districts in the Midwest. Our gallon distribution has never been too good there, and we had been subject to a series of five cents off on gallons promotions by Linco and Roman Cleanser, and we ran this counter promotion of the price off on the gallon size in these restricted territories in the Midwest.

The others were, the other promotional devices we have used since August 1st, with the exception of the national promotions, which are broad scale, have been put on as counters in localized areas as Purex introduced this new line of bottles.

Q. Now, Linco and Roman Cleanser—it is your experience in 1947—have had these five-cents-off deals, have they, not? A. They have been giving us hard competition since then. I don't believe I mentioned any five-cents-off offers specifically in 1947, but their activity along those lines has intensified later.

Q. When did that start, sir? A. Well, I can remember sending over to Mr. Trimpe on a number of occasions notification that we had received from

(Tr. p. 5205)

our clipping service of competitive bleach manufacturers' advertisements where attention would be called to these five-cents offers. I would compile these and send them over to him. Now, there have been two or three of those. I couldn't—the dates of them I don't recall. Now, Linco, I know, uses them periodically.

Q. In your possession you have all these coupons and have had them—not coupons, excuse me, these advertisements of various competitors? A. Yes.

Q. Now, where were these six Midwest districts that you spoke about and what do you have reference to as a district? A. Well, these would be distributor's territories, and run from Chicago around to some of the Roman Cleanser territory in Michigan. It would be confined to an area around there. I can get the precise list of distributed territories, if it is required.

Q. All right, sir; thank you. We don't require it. Maybe your lawyer will.

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Eric Bellingall—Cross

(Tr. p. 5207)

Q. Now, who was the self-liquidating premium aimed at which was used nationally in the Spring of 1958 drive? A. In the Spring of 1958, you have reference there to the laundry dampening bag?

Q. Yes, sir. A. This was aimed at the basic concept of our national promotions that I have discussed previously. It is aimed at developing a volume increase for us across the board and of refreshing in this case the spring promotion that we had started prior to that. Our premium section had investigated a whole bunch of premiums and came up with this particular one, which on judgment, appeared to us to be one that was excellent for our purposes, primarily because it had good tie in value with the product, a laundry dampening bag, that wet clothes could be put in, kids bathing suits and so on, that was selected by our premium section and checked out by them and run in the Spring of 1958.

Q. Well, what I am trying to determine, is this what you would call a constructive promotion as contrasted to a counter type promotion aimed at a given competitor? A. Your nomenclature is new to me, but this is not a counter promotion. That is correct. It is in the different category that we spoke of. Our national promotions moving towards developed uses and increases in volume, yes, sir.

Q. Is not one of the objectives of a counter promotion

(Tr. p. 5208)

also an increase in volume of the product to be promoted? A. Well, its primary purpose is to avoid a decrease in volume. Counter promotions, as we conceive of them, are a research of promotions that you can use when you are confronted with a particular competitive activity that you consider detrimental, and that was not the case in the use

of the laundry dampening bag. That was in a different category as far as we were concerned.

Q. All right, sir. Now, has the Clorox Company since August 1, 1957, ever used a constructive promotion in a region or a section as distinguished from a counter promotion against another competitor? A. Wel, our so-called constructive promotions as you have determined them, have been confined to the national level, that is ve have put it on more or less every territory across the boards. We like to minimize costly promotions as much as ve can and put the money in the advertising in the long range development of the consumer acceptance of the brand.

Q. Well, is your answer to my question then, no, we have not had the constructive type of promotion in the regional and sectional level? A. We have employed none since August 1, 1957, other than the counter promotions that we had previously conceived, yes, sir.

Q. Now, who were you countering in Chicago with a cents off label on the Clorox liquid bleach?

(Tr. p. 5209)

A. Linco.

Q. Nobody else? A. Linco is the big problem there, and the ones that have been using the cents off offer on their large size to the detriment of our gallon sizes particularly.

Q. Now when you say that it has been to the detriment, is that based on Nielsen market shares or something constructive? A. Actually, in this instance, it is based on a report of our marketing director, who had gone back there to look at this poor situation that we had there, and to make recommendations to see if something couldn't be done about it and his recommendations to me and consequently mine to the client was that Linco activity had to be met in kind.

Q. When was this? A. This was in the first half of 1958. The precise date of his trip, I don't know. Is that what you want the date of his trip or when we put it on? Both would be in the first six months of 1958.

Q. All right, sir. A. I can get you the date on it, if you want it.

Q. Now, the same question, with respect to the Atlanta Georgia situation, where there were six cents, four cents, and two cents off the label of various sizes of Clorox? A. That would be six cents, gallons, four cents, half gallons, and two cents across. I think that is the one you

(Tr. p. 5210)

have reference to. This price off label promotion in the Georgia region was a counter to the introduction by Purex of its new bottle in that area.

Hearing Examiner Haycraft: How long or how much of an inroad, as you call it, does a local competitor have to make before you turn on your promotion?

The Witness:

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We have used as different devices, price off labels, the coupon on the bottle, the newspaper coupon, and so on, and in some territories, we did not meet it with a promotion, but tried to meet it with whatever increase there was in an advertising schedule.

Hearing Examiner Haycraft: No pattern then?

The Witness: No, sir, no. I think I see now a little closer to your Honor's point. Sometimes we won't wait for the full effect of the competitor's promotion to take place with the consumer, that is, if he moves with a promotion, we may elect to move simultaneously or as close to simultaneously as we can. In other instances, and this can depend on holidays and so forth, we wait until we get a

(Tr. p. 5211)

better reaction from our distributors in the area, and then try to go in to prevent the second purchase. Am I clear there, where a promotion might do a sampling job for the competitor and we would move against the time that we would judge that the woman would be going back for a second bottle. We don't want her to be setting up a habit of purchasing the thing that she has been temporarily attracted to by a promotion, so there is a variety of timings in this activity.

(Tr. p. 5212)

By Mr. Tincher:

Q. Do you know when this Atlanta situation was, when your price-off labels took place? A. In 1958, the majority of these ran—they were keyed by when Purex hit the territory. The great majority of them ran May, June, I think some of them ran over into July, and into this quarter, the second half of 1958. I can get you the date of the Atlanta promotion.

Hearing Examiner Haycraft: Following that program, it is pretty hard for a small concern to get toe-holds, isn't it?

The Witness: I think they have gotten their toe-hold, Your Honor.

Hearing Examiner Haycraft: To increase their share of the market, will we say?

The Witness: For the most part, I think promotions tend to have a temporary effect anyway. They are a shot in the arm thing. You put on a special inducement on your product. You are very likely to get some immediate reaction from a price-minded buyer. If one brand fails to make any counter at all to this, either in the form of advertising or getting across a better quality concept, or promo-

tion, then it is subject to a constant nibbling away of its share.

Hearing Examiner Haycraft: They hope to retain some of the new customers.

(Tr. p. 5213)

The Witness: I think that is the basic idea of it. They know they are not going to retain all of it. Experience proves that out, but they hope they might jump to a sudden ten percent increase and retain some portion of that. You can't counter them all when you have them all over the lot.

By Mr. Tincher:

Q. Is every time any liquid bleach producer tries to expand his territory or improve his product or improve his distribution or his marketing service, is that considered an attack by the Clorox Company which demand a countering measure?

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The Witness: Well, we have no control over his improving his product. We could cite many more instances of not countering a localized promotion than we can cite of countering. In fact, if we could do without countering, we would be happy to do so. Long range, we feel that the development of our brand consists of developing and enhancing the product image in the mind of the consumer.

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(Tr. p. 5214)

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By Mr. Tincher:

Q. My question, is that your objective, now in keeping that objective in mind, is every expansion in the territory by a liquid bleach competitor or the introduction of a new bottle or the introduction of a promotional campaign in an

existing locality, is that considered something which Clorox should counter? A. It is considered the introduction of a product into a territory that it had not previously been sold in, is certainly considered a matter of deep concern to us, because particularly, obviously if we are in the area, and they start to move into that area, we take whatever means we deem necessary to protect our business. You mentioned quality, earlier, that is something we can't control. Thy can improve the quality of their product beyond any influence that we would have on it. The matter of promotion, I believe I have covered, that is every time a competitor puts a promotion on, we do not respond in kind or necessarily at all, because we can't. There are just too many of them going on in the bleach industry all the time, and we have to be selective in our judgment of which ones of those are most likely to be detrimental to our position.

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(Tr. p. 5215)

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By Mr. Tincher:

Q. Now, when was the dishcloth used as a premium in Los Angeles? A. That was in May, and I am delighted to remember one date specifically for you, May 1958.

Q. And why was that used, sir? A. Again, this was Purex's introduction of its new line of packages in that area.

Q. How long has that continued? A. That was about a month.

Q. Was that a dishcloth fastened right to the bottle of

(Tr. p. 5216)

bleach? A. That is correct.

Q. Was that on all sizes of Clorox or just certain sizes? A. We tried to—I am not certain. We generally try to

encourage the purchase of the larger sizes for obvious reasons, and most of these things are confined, couponwise, and pricewise, to the larger sizes. This one may have been on all three. I don't know whether this is in the record or not, what size it was on.

Mr. Royall: I wish I could tell you. I can't remember those dates.

By Mr. Tincher:

Q. All right, sir. Now, turning to San Francisco, to cents-off coupons there, when were they? A. That was about that time. I think, my recollection is June of 1958. These things occurred pretty much within a limited time spell, because they were moving ahead quickly to put this new bottle into new areas and in San Francisco, we used the counter of the cents-off label. I believe it was a 2, 4, 6 again.

Q. All right, sir. Now, how about the cents-off labels in Chattanooga, Tennessee, when were they utilized? A. I don't have the date, it would be in the same general time period, the middle part of 1958, whenever it was that we countered their move into this market.

(Tr. p. 5217)

Q. That was aimed at Purex? A. Aimed at Purex, yes.

Q. How about in Nashville, Tennessee? A. That is the same thing.

Q. The fact that Texize entered into Nashville, was not one of the reasons for this couponing in this promotion in Nashville then? A. What was in Mr. Trimpe's mind about that, I do not know. We drew up a list and had ready a group of these promotions and we got a list of dates when Purex was moving across with its bottle. A

far as Texize is concerned and Clo-White, is concerned, both of them had been giving us difficulty in southeastern areas previously, which was why we tried to do something about it with radio before this.

Q. What was that, back in '55? A. 1956.

Q. Now, when was the apron premium used in the Southeast? A. The apron, the clothespin apron premium was used in the fall housecleaning promotion of 1958, and this was the premium that was used generally on a national scale. I say generally on a national scale, because there were some territories where, because of the Purex activity, we already had a promotion going, so where we had one, why we did not use the apron premium additionally, but with those few exceptions, it was a national promotion for us, the clothes-

(Tr. p. 5218)

pin apron.

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(Tr. p. 5242)

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By Mr. Tincher:

Q. Yes, sir, and can you tell us approximately when in the year 1957 the radio was dropped? A. I could tell you precisely if I had my record here.

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(Tr. p. 5243)

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Hearing Examiner Haycraft: Was it at the end of that fiscal year?

The Witness: It began in 1956—I am hazarding a guess, our media director who would have this at his finger tips —my recollection is that we began in the latter part of

1956 and that it ran from, oh, for a period of some nine months to a year.

By Mr. Tincher:

Q. Do I understand correctly radio was abandoned at the end of that period because the situation had not improved any? A. In our judgment, the radio was not doing a sufficiently effective job to warrant its continuance.

Q. Was that once again based on Nielsen? A. It was based on Nielsen and certain field checks that we made, sending a man out from our office to investigate distribution patterns in the Southeast territory, and on reports coming to Mr. Trimpe for that from distributors as to the reaction in the areas where we had been directing the radio.

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(Tr. p. 5256)

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Q. Now, sir, you testified to the current rate of spending for advertising and promoting "what is adequate for the task confronting this brand of Clorox in its own industry at this time." Now, what are those tasks, sir?

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(Tr. p. 5257)

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The Witness: The basic task confronting us as advertising counsel is the maintenance of the brands' position in the market.

By Mr. Tincher:

Q. And that is the extent of your objective? A. We have what we consider supplementary tasks, some of which are indicated by aspects of our national promotions—namely, the education of the housewife to the multiplicity

of uses of the product, with the idea of encouraging uses of Clorox above and beyond its traditional long-range function.

Q. Well, do you have any objective to increase Clorox's market share rather than just to maintain Clorox's market share? A. Well, we have our hopes in that direction. The expectancy is not too great when you have a brand that has a share position as Clorox has. It is difficult to increase share against aggressive competition.

The main secondary objective of our marketing strategy, as a matter of fact, is to increase the consumption of bleach in the non-laundering applications. One of our objectives is the introduction of a second bottle into the home for

(Tr. p. 5258)

those purposes.

Q. All right. A. I think you will find this in our advertising.

Q. With reference to the statement that it is difficult to increase market share of Clorox against its competition, that is assuming a constant amount of expenditures for advertising promotion, is it not? A. Well, actually we haven't had a constant amount of expenditure. We have had rather a fairly constant rate per case expenditure and it has been fairly constant, over a period of time, because it has been accomplishing some of these objectives that I have stated, namely, maintaining our market share by the annual development of additional casage, of additional volume, on the ground that you require to maintain your share in an expanding market.

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(Tr. p. 5259)

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Q. Now, you testified that increased expenditures per case for advertising and promoting would not have been economically sound for Clorox; is that correct? A. It is correct that I have so testified, yes.

Q. Do you have any proof of that as contrasted to your personal opinions? A. Any proof of it?

Q. Yes, sir. A. My personal opinion is that the case rate was right, and the proof of it would be the record of the company during the years that we have been doing this. I don't know of any other proof that argues better for the expenditure as it has been done over a period of years.

Q. And since the acquisition you have not increased that case rate; is that correct? A. That is correct.

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(Tr. p. 5261)

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Q. Now you have testified, sir, that local manufacturers can obtain TV spots at a rate lower than a national manufacturer, as you said in numerous instances? A. Yes.

Q. What is your definition of a local manufacturer and of a national manufacturer? A. Well, it might be better if I gave you the stations' definition. Would that—a national advertiser is one who advertises nationally and the television stations so define it. Clorox is a national advertiser and as a consequence, received its advertising from TV stations at the national rate, even in its home headquarters of Oakland; a local advertiser is defined differently by different television stations. Some local TV stations confine the interpretation to a manufacturer-advertiser in the community, that is, in the city limits. Others consider it over an area of counties, there are some that will include manufacturers

(Tr. p. 5262)

in the same state as being defined as local. We have encountered some TV stations in the Northwest that lump the states of Washington and Oregon and consider that as a local manufacturer. By that I mean, that if you produce and advertise in either Washington or Oregon, a particular station up there, will consider you a local manufacturer, and give you the local rate as opposed to the national rate.

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(Tr. p. 5266)

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Q. You stated since the acquisition there has been a growth of private labels, is that correct? A. There has—I thought I said that since 1955 there has been a continuing increase in private label activity. Did I say since August 1, 1957?

Q. What you have just said now is what you meant to say, is that right?

(Tr. p. 5267)

* * * * *

The Witness: From 1955, it is my understanding and belief that there has been a growth in private label activity, yes.

By Mr. Tincher:

Q. All right, has that fact changed any since August 1, 1957? A. I think that trend that I discussed has continued. I say that because of reflections by Mr. Trimpe of field reports that he has gotten from his distributors as to new chains putting out private labels under their own aegis.

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(Tr. p. 5276)

The Witness: I have here two rate cards for KBH TV, Denver. One is designated "General Rate Card Number 8, effective October 1, 1958."

Hearing Examiner Haycraft: Let's give that a number, please, before we go any further.

(Whereupon, the documents referred to were marked Commission's Exhibit 647 for identification.)

The Witness: That is the general rate card. I have another rate card from the same station, KBHTV, designated "Local Rate Card Number 7, effective October 1, 1958." The general card gives a national rate, and the local the local rate.

Mr. Tincher: We will have the local one marked 648.

(Whereupon, the document referred to was marked Commission's Exhibit 648 for identification.)

* * * * *

Q. My question, sir, where on these will I find this station's definition of a local advertiser and of a national advertiser? A. I don't know if they so define on their rate card.

Hearing Examiner Haycraft: Well, do you recognize them as what you just said?

The Witness: Yes, sir, sir, one is general and national rate card and the other is a local rate card, with

(Tr. p. 5277)

their rates for the comparable periods of time.

Hearing Examiner Haycraft: Can you give us comparable rates in the same thing between the two cards?

The Witness: Well, yes, sir.

Hearing Examiner Haycraft: So we will know what you are talking about.

The Witness: Do you want an example, your Honor?

Hearing Examiner Haycraft: Yes, sir.

The Witness: For instance, Class AA, this is from 7:00 to 9:00 p.m., a one-time announcement on the national rate for either a 60 or 20 second commercial would cost $235. I am sorry, that is a poor example, because they don't have Class AA on their local rate. Let me get one I can compare directly. Here is one. Take another time. Yes, sir, they have Class A for both the national rate and the local rate. A one-time announcement in their Class A time would cost $205 on the national rate, $160 on the local rate. 60's and 20's cost the same.

Another example, the Class C commercial on the national card would cost $55 against $50 for the local card. 60's and 20's cost the same in both instances.

Hearing Examiner Haycraft: Is it a fact that there are a number of classes like you just mentioned that is on the national rate card that is not on the local?

The Witness: The lettered designations, sir,

(Tr. p. 5278)

indicate the hours. For instance, the Class AA, from 7:00 p.m. to 9:00 p.m., would be non-preemptive, that is, if you are buying it on a network basis, you can't be preempted from that time.

Hearing Examiner Haycraft: In other words, if you had that on a national basis, the local can't get into it?

The Witness: That is right.

Hearing Examiner Haycraft: Is that true of any other period of time?

The Witness: It might vary from station to station. They have Class A, Class B, Class C times available on their local card. Those same three classes, plus Class AA

for their national card, because the only ones who would be buying the national card at the national rate would be a national advertiser.

I think the essential point here is that a national advertiser who is buying a spot on that station has to pay more for it than a local advertiser who is buying an individual spot on that station.

By Mr. Tincher:

Q. And, sir, the time which could be preempted by local manufacturers or local people on the local card rate is considered prime time, is it not, the best time for advertising with TV spots? A. It is certainly the most costly. Whether it is the

(Tr. p. 5279)

best or not would depend upon the advertiser. The prime time is the non-preemptible time reserved by the network for its major transcontinental shows.

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(Tr. p. 5288)

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Q. And whose decision was it, if you know, to have Procter & Gamble redeem coupons of Clorox? A. At the time, we were discussing the types of promotions that we had planned and were ready to activate, to put into effect in the field, the question arose as to whether we would have the coupons collected by a coupon collection agency, such as Reuben Donnelly, or R. H. Donnelly, or a local collection service, and the advertising department of

(Tr. p. 5289)

Clorox, Mr. Shaver stated Procter & Gamble had such a facility for collecting, and that why not go through that?

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(Tr. p. 5290)

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Q. Now you have said with most of the P&G brands. Are there brands then in which you believe the association does exist? A. No, as a matter of fact, I don't know of any P&G brand that I can think of, from my observation in the market place and the checks that we get from our field people, that makes a continuing point of the proprietorship of the brand. I have no doubt that the name "Procter & Gamble" appears some place, for instance, on a package of Tide, but in comparison to the weight given to the brand identification, it is insignificant and I think the housewife's loyalty is directed towards the Tide name rather than the other. That I very strongly believe, and that is what I said before.

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(Tr. p. 5297)

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Room 332
Federal Trade Commission
Washington, D. C.

Wednesday, 7 January 1959

Met, pursuant to adojurnment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5298)

PROCEEDINGS

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Eric Bellingall

resumed the stand as a witness for the Respondent and,

having been previously duly sworn, testified further as follows:

CROSS-EXAMINATION (resumed)

By Mr. Tincher:

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(Tr. p. 5303)

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Q. Now, you stated that initially it was difficult for the Clorox Chemical Company to get one-minute TV spots. Why was it difficult, sir? A. It was difficult only in this sense: There were less one-minute availabilities at the time that we went into the spot TV. The way this is done is when we decide upon a spot TV schedule, our media people contact the individual television stations on which we have decided to run schedules. They ask these stations for their rates and for their current availabilities in both minutes and 20s. They select from those availabilities the particular pattern that they think will best suit us; that is, the times of day and the adjacent programs that they think will command the best audience. Minutes are traditionally scarcer than 20s. I think that is a truism in most media buying.

(Tr. p. 5304)

So you start out getting the spots that the best availabilities that you can for your purposes and then, as different availabilities come up, start refining it to come out more to the end objective that you had in mind.

I believe I mentioned earlier that our company media department felt that a minute would be a better vehicle for carrying our particular sales message at this time than 20s. We wouldn't want one hundred percent minutes, but we would like a balance in favor of minutes over 20s

for the message. We make up both sixty-second and twenty-second commercials.

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(Tr. p. 5316)

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Hearing Examiner Haycraft: What was your testimony with respect to the use of TV time by Clorox?

The Witness: That is a general question; you mean, why we use TV spots as against network?

Hearing Examiner Haycraft: Yes.

The Witness: We prefer to use TV spots for Clorox rather than network because basically the greater flexibiliey of spot TV fits what is in effect a flexible or regional pattern of our product in its industry. We have some markets where we have a substantial share of market.

(Tr. p. 5317)

A great many consumers buying our brand in that area. We have other markets where we have extremely limited distribution and have poor consumer acceptance.

To purchase network TV which would in effect deliver the same amount of advertising into these very uneven and dissimilar areas, we would consider to be an economic waste. With spot TV, we are able to adjust the level of advertising that we put into a market to the amount of business that we are supporting in that area.

By Mr. Tincher:

Q. All right, sir. Now, my question is: Do you have any national TV programs, so you will know whether or not what you say is your opinion in this case is correct? A. In answering your question, I would really have to check our media director to find out whether we have used network TV on any of our other accounts in the past.

Is that the first part of your question?

Q. Yes, sir. A. The other is that I am not here as an expert on media. I am here reflecting the views of the media department that we have with some 20-odd people in it who study these questions and make recommendations to me as to which they think more suitable for the product.

Q. Well, you are not here as an expert in advertising, then, you are just here to talk about what you know about

(Tr. p. 5318)

Clorox and not advertising in general; is that right? A. I was referring to the reasons that I have for preferring spot TV versus network TV and the expert knowledge that is made available to me in that category.

Hearing Examiner Haycraft: I might say, Mr. Tincher, for your benefit, that in making the statement I did a while ago about official notice, that I am calling upon, drawing upon experience that I have had in other cases where this matter of television and radio time, all that, has been gone into quite thoroughly. And that it isn't just a case of snap judgment on that.

Mr. Tincher: I would certainly appreciate that, yes, sir.

Hearing Examiner Haycraft: And you are getting into a field now, which is almost on the same basis, what the witness has said is quite—I have heard the story, many, many times over before and while I am not saying, you will not have an opportunity to disprove it, I would say that was quite universally accepted in the advertising field as the phenomena that exists where you have national advertising in an attempt by manufacturers such as Clorox to meet local situations.

If you go in there with a media that is quite expensive and they have little distribution, it is quite an expensive process, whereas if they have large distribution,

(Tr. p. 5319)

they don't mind doing it. And for that reason, they take a cheaper method of advertising, such as spot.

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Q. Is a promotional allowance a counter method of promoting? A. In effect, yes, because it is an inducement to the

(Tr. p. 5320)

grocery to give you an in-store promotion to push your product more to the consumer in the way of mass displays and to tie in with display materials that you furnish him in an effort to improve your situation.

Q. And that is so much a case as a promotional allowance? A. That is correct.

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(Tr. p. 5332)

Mr. Tincher: All right, sir. At this time, in view of this witness' testimony, which you finally allowed in, that testimony being that these things were planned in 1955 that were not used until 1958, because the competitive situation did not require them. We demand and ask that the Examiner require the witness to produce all correspondence, memoranda, and accompanying or enclosed documents or objects between this witness and the Clorox Chemical Company and/or Mr. Trimpe from June 1955 to August 1, 1957, concerning promotions or potential promotions other than the national housecleaning promotions. And we make the same request for the same documents and the same type of information for the testimony that there was no competitive reason for using such promotions from June 1955 to August 1, 1957.

Hearing Examiner Haycraft: Well, I will not make that demand. However, I shall be glad to sign a subpoena for you to get it as part of your rebuttal.

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(Tr. p. 5333)

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Mr. Tincher: I myself apprise you of my position, sir. My point is the burden of proof is on the respondent of this case to come in and prove this contention——

Hearing Examiner Haycraft: All right. They have done it by this witness.

Mr. Tincher: If all they have done is this oral business, I don't think that sustains that burden of proof, and I don't think I have to go behind it.

Hearing Examiner Haycraft: I think he has sustained it amply. You don't have to prove these things by writing; here is a man that is a party to it.

You meet a man on the street and you say to him, "I will meet you at the airport, and we are going to enter into an agreement." And you go somewhere. You don't have

(Tr. p. 5334)

to have a written document to prove that you made that agreement or that you made that appointment. The chances are that many agreements, gentlemen's agreements or what have you, are made without a scratch of the pen.

You don't have to have that, so that a man who is a party to an agreement or a party to a negotiation or party to a transaction certainly can testify unless, by cross-examination, it develops that the entire transaction was a matter of writing, was finally computed, recorded, and

what have you. Then of course, the document of writing becomes the best evidence of what happened.

But certainly up to this point, up to the present time, the witness' testimony is satisfactory.

Mr. Tincher: Is what?

Hearing Examiner Haycraft: Satisfactory, and competent.

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(Tr. p. 5338)

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Q. Now, sir, from the time you and Mr. Trimpe originally discussed these counter-promotions up until the time of the acquisition, did you ever discuss this with any other official of the Clorox Chemical Company?

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(Tr. p. 5339)

The Witness:

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The point I was trying to make was that I don't have any letter from anybody telling me to go ahead and run an ad or place a TV spot now. We discussed these things, coming to agreement, the agency and the client working together over a period of thirty years. We have a meeting, a conference, come to an agreement of minds, and we would come out and put the thing into effect.

We never try to come back with a piece of paper in our hand saying we can buy three spots here or move an ad from

(Tr. p. 5340)

this paper to that paper. That type of formalized approval isn't standard or sought. We would have fifty such occurrences a day.

Our media department, for instance, is impowered to go ahead and shift and alter spots at its discretion. It

works under a general policy. If we would like to have more minutes than 20s, then they just go ahead and do that all the time. We will even change from one station, from one spot program to another without notifying the client until it has been done.

* * * * *

Q. Now, when you institute a complete new program, not a spot or a change from twenty seconds to a minute, but a complete new program of types of activities which are not being used, that it is not necessary to reduce that to writing and get approval, especially by the executive committee and the

(Tr. p. 5341)

officers of the corporation? A. That is absolutely true, Mr. Tincher. For instance, when we instituted the national promotions in the spring of 1956, we had no such document that in effect said that you may now go ahead and put in effect a national promotion. This had been discussed, been agreed upon, and we went ahead and did it. I don't have a letter that says I can go ahead and stage the fall housecleaning promotion of 1956, the spring housecleaning promotion of 1957, or, to my recollection, any promotions since then.

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(Tr. p. 5375)

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RECROSS EXAMINATION

By Mr. Tincher:

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Q. But still, on this Respondent's Exhibit 83, you can't tell us about the four hundred thousand, where it would be?

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(Tr. p. 5376)

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A. What you are looking at is actual expenditure figures, and the four hundred thousand was simply the difference between the 3.8 that I knew about for media expenditure and the 4.2, that million, which would embrace the total. And out of this difference of four hundred thousand had to come out the sales promotion plus additional costs, on the cooking school stuff and things of that kind, administrative and so on. But the precise expenditure for sales promotion and the expenditures that we wouldn't know about, that Clorox makes, are all given there. My figure was just an estimate that would cover that blanket amount for these types prior to the actual costs and the actual costs are reflected in a document of this kind.

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(Tr. p. 5377)

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Q. Well, that is all I am asking you, sir, where is that shown?

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The Witness: They have it broken down here under four categories; that is, promotional materials. There are food shows and cooking schools. They would be costs that we wouldn't keep. Cooperative advertising is something that is a Clorox Company cost and bookkeeping procedure we wouldn't know about, and their six-cents allowance plan. The types of promotions that we would activate in the field, these counter-promotions and so forth—probably Bill Tower should be saying this rather than myself—would be the ones indicated in this category of promotional materials.

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Eric Bellingall—Recross

(Tr. p. 5398)

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Mr. Tincher:

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(Tr. p. 5399)

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Then I have, of course, the main motion which encompasses this exhibit within it, also, and that is to strike all the evidence and exhibits, the oral testimony of this witness, concerning his meetings with Mr. Trimpe in 1955 and what was resolved at that time and what was carried on thereafter up until the time of the acquisition with reference to types of promotions other than national promotions and also all testimony in connection with the competitive effects during the period from 1955 to August 1, 1957, as to why these particular promotions other than national promotions were not put into effect.

Hearing Examiner Haycraft: Well, your motion is granted with the further understanding that any of that testimony that relates to the situation after the acquisition as reflecting agreements or understandings or programs that had been adopted or discussed before the acquisition, to make sure we tie those two together.

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(Tr. p. 5415)

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Mr. Royall: Your Honor, I want to say just one thing. His argument is on plausibility and credibility. I am willing to risk that on Mr. Bellingall's testimony. He has not offered a single argument that this is not relevant or true.

Hearing Examiner Haycraft: I think he has, I disagree with you there, and I think I have indicated my reasoning

enough that all I will need to do will be to rule, and that is to reiterate that the testimony which

(Tr. p. 5416)

was taken yesterday and today, and the exhibit which has been received in evidence, Respondent's Exhibit 111-A through F will be stricken. Included in that, of course, will be all testimony which relates to a condition or situation which did not transpire and your bottle goods that you are talking about, your larger bottles will be included in that, your three-quart bottle. As I indicated in the very beginning, when the offer of proof was made, I will allow testimony as to what they actually did, before and after the acquisition.

That was the basis of the offer of the proof and that will be the basis of my ruling, and I will suggest that you submit to me the pages and lines that will carry out that and I will then rule definitely as to the pages and lines.

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(Tr. p. 5427)

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Mr. Royall:

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At the last hearing we offered to furnish information related to certain matters as to which Mr. Trimpe testified and we have secured this information and I now offer the following: At the request of Mr. Tincher Mr. Trimpe—and I believe of your Honor—Mr. Trimpe offered to furnish the addresses of the bleach manufacturers whose names appear on RX-67-A to Q and that request, as I understand it, was made on transcript 4233-7, 4264 and 4964.

We have prepared a list showing those manufacturers; in determining the addresses of some of the manufacturers

we found, for example, in one instance there was a duplication. That was a duplication of the Austin Company in Mars, Pennsylvania about which Mr. Tincher inquired at 4969.

(Tr. p. 5428)

In determining the addresses of the manufacturers it was discovered that some were subsidiaries of other companies which were otherwise listed and in four or five instances the companies were no longer in existence.

After making these adjustments and on the basis of information available the list indicates that at least 229 manufacturers are presently manufacturing household liquid bleach.

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(Tr. p. 5429)

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Hearing Examiner Haycraft: Let's give it a new number and say it is a revision of 67-A to Q. That would be better because there may be some testimony in there on the other one.

112 is the next number.

(The document referred to was marked Respondent's Exhibit 112-A through U for identification.)

Mr. Royall: And that is to be in place of——

Mr. Tincher: Revision of——

Mr. Royall: Revision of RX-67-A to Q.

(Tr. p. 5430)

Hearing Examiner Haycraft: That is received in evidence.

(The document heretofore marked Respondent's Exhibit 112-A through U for identification was received in evidence.)

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(Tr. p. 5438)

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Hearing Examiner Haycraft: All right.

(The document heretofore marked Respondent's Exhibit 94 for identification was received in evidence.)

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(Tr. p. 5439)

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Room 332
Federal Trade Commission
Washington, D. C.

Thursday, 8 January 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 5440)

PROCEEDINGS

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(Tr. p. 5446)

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Harry Nickelson

was recalled as a witness on behalf of the Respondent and, previously having been duly sworn, was further examined and testified as follows:

FURTHER DIRECT EXAMINATION

By Mr. Royall:

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(Tr. p. 5447)

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Q. Does that refresh your recollection? A. That is right. This table shows the Clorox sales and share computed on a 32-ounce equivalent basis for the same period as is expressed in the bottom line of the table shown in RX-94.

Q. What is that—what period is that? A. That is from August 1, 1957 through July 31, 1958.

Q. Now, what is the percentage?

* * * * *

A. The Clorox share on a consumer dollar basis for the year up through July 31, was 48.7 percent on a consumer dollar basis and 45.8 percent on a 32-ounce equivalent basis.

By Mr. Royall:

Q. Now, do you know what the share of Clorox was for the months of October-November 1958? A. Yes, just last week we had a preliminary tabulation which was available to you on Monday of this week, I believe, and that figure shows that Clorox's share for October-November

(Tr. p. 5448)

1958, again based upon our preliminary advance tabulation, was also 45.8, the same as for the year ended July 31, 1958.

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(Tr. p. 5450)

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Harry Nickelson—Cross

CROSS-EXAMINATION

By Mr. Tincher:

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(Tr. p. 5469)

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Q. And if you want to see where in the last year listed on Respondent's Exhibit 94 the trend has been you would use these bi-monthly periods and the other bi-monthly periods we already have of record for the earlier months after July-July of '57? A. That's right, but you could not look at the trends for a single year by itself because there are seasonal characteristics of this market not only in terms of the total but also seasonal characteristics of brand share trend.

Q. That's right——

(Tr. p. 5470)

A. Therefore, you must look at a trend not only for one year but also for all years.

Q. And that is why Respondent's Exhibit 94 which you have in your hand shows an entire year without showing the trends within the year, does it not? A. That is right. If there are any seasonal changes that have occurred either in terms of the total market or in terms of brand share this erases those seasonal influences.

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(Tr. p. 5480)

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Mr. Royall: Now, your Honor, there are some other matters to bring up. I think I may have said this morning, we are going to ask for adjournment at noon until tomorrow, but some of these matters we can get out of the way.

Your Honor, Mr. Trimpe testified at the November hearing that Clorox had introduced a new quart bottle in Buffalo and Atlanta and that the company had increased the price of Clorox to those two dealers.

He further testified that Clorox was unable to sustain its sales in those markets with the increased price and was subsequently forced to discontinue the sale of new bottles and reduced its price in these two markets.

We were requested to produce figures as to the loss of sales in these markets and that appears at Page 4912 and 4913 of the transcript.

I now state that the sales figures show that in Atlanta the bottle was introduced January 15, 1958. In February the quart share of Clorox total volume was down 2.8 percent, compared with the previous year; March, 1.4;

(Tr. p. 5481)

April, 3.8; and May, 6.3; all down. We have IBM sheets to support that data.

In Buffalo, the quart bottle was introduced in January of 1958. The quart share of Clorox volume in February, as compared to the previous year, was plus 2/10 of one percent; in March, down 3/10; in April, down 1/10; in May, down 2-2/10; June, 1-7/10; and July, 2-7/10.

I think the sale of the quart bottle, it appears, was discontinued in Atlanta on June 30, 1958, and in Buffalo on September 4, 1958.

* * * * *

Mr. Royall:

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Now, your Honor, we are having some difficulty in determining what is necessary to close our case because of the lack of time up to this time for anybody to

identify exactly the questions and answers which your Honor struck or the answers which your Honor struck.

(Tr. p. 5482)

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Now, I ask you that, Your Honor, because off the record and afterwards we had some private conversation about it, with all the counsel present. What I would specifically like to know is whether this evidence was stricken because it was not credible, believed, or whether it was stricken because your Honor considered it irrelevant.

Hearing Examiner Haycraft: It is the latter.

Mr. Royall: Just the latter.

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(Tr. p. 5488)

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Mr. Royall: Your Honor, at the hearing in Los Angeles, there was offered and received over our objection annual reports of the Purex Corporation. I don't know exactly what years, but up to 1957. We now desire to offer into evidence, that is the fiscal year '57. We now desire to offer in evidence the annual report of Purex for the fiscal year ending June 30, 1958, and it is in the form of an attested copy from the Securities and Exchange Commission.

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(Tr. p. 5489)

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Hearing Examiner Haycraft: It will be marked Respondent's Exhibit 114.

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(Tr. p. 5496)

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Mr. Royall:

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Your Honor, another subject, and the final one on Mr. Stoneman; I am pretty sure there are some documents that we will want produced if he is going to be put on the stand.

Hearing Examiner Haycraft: Why don't you give a memorandum of those documents?

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(Tr. p. 5497)

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Hearing Examiner Haycraft: (Interposing) If they tell you what it is they would like to have produced this far in advance, you can write to Mr. Stoneman and ask him to bring those documents here, and we will settle the question whether they are entitled to be put in evidence at the time he gets here. Just a matter of asking him, similar to a request for the production ahead of time. I think it is

(Tr. p. 5498)

just a matter of trying to expedite the proceedings and I shall ask him, I will certainly do that; I will ask that you pass on to Mr. Stoneman any requests that Mr. Royall makes, and you can tell him that I suggested that he bring those with him, whether he thinks they are relevant or material or should be produced, we will settle.

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(Tr. p. 5502)

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Room 332
Federal Trade Commission
Washington, D. C.

Friday, 9 January 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5503)

PROCEEDINGS

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Howard J. Morgens

was called as a witness for the Respondent and, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

* * * * *

By Mr. Royall:

Q. Mr. Morgens, it has been asserted in this case that Procter and Gamble has the legal power, or had the power I believe they said, to determine the policies and practices of the Clorox Company. That is right, is it not?
A. Of course it is, sure.

Q. Is there a distinction—let's put it this way: Do you distinguish between legal power to determine matters relating to the company and power in the marketplace?

Mr. Tincher: Wait. We object, sir, on the grounds of no possible relevancy. Whatever was determined today

(Tr. p. 5504)

could be changed tomorrow.

Hearing Examiner Haycraft: Well, I think that this is probably a basis for defense, part of the defense, even though there might be a legal power to do something that economic conditions might be such that it would be suicide to do it, economic business suicide.

The objection is overruled. I will let him testify to that.

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(Tr. p. 5508)

Hearing Examiner Haycraft: I am going to pursue the same policy on this. I will let him answer and let you cross-examine him, and then we will take a motion to strike, because I don't think it is relevant and competent.

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By Mr. Royall:

Q. Now, Mr. Morgens, as a practical matter and based upon your experience, what type of power—describe the power that an owning company might exercise as to a subsidiary company?

* * * * * *

A. The power that Procter and Gamble, or any business that I know of, can exercise is the result of really three main

(Tr. p. 5509)

factors: First of all it is money; secondly, it is brains——

Hearing Examiner Haycraft: Management.

A. (Continuing) ——and thirdly, it is the restraints imposed on the use of money and brains by good business judgment and common sense.

Now, that is a mouthful and maybe I should go to——

By Mr. Royall:

Q. Let me ask you this: Is that statement of yours based entirely upon your practical knowledge? A. It is. I am no economist. I don't pretend to be.

Q. Yes. Now I will go ahead, sir. You have described two elements, have you? A. Well——

Q. Three elements. A. Three elements. By money I mean, of course, cash and securities that can be readily

converted into cash. That is an element in power along with these other factors.

Q. Let's take that one up. What is the situation, the factual situation as to money in the case of the Clorox Company?

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(Tr. p. 5510)

A. Well, the facts on money in relation to the old Clorox Company are something I feel qualified to comment on. At the time we bought the old Clorox Company it had far more cash in relation to its sales volume than Procter and Gamble had. By that I mean it had more cash, more excess cash over and above its normal operating requirements. We think, in those terms——

Hearing Examiner Haycraft: What was the ratio?

The Witness: It had more cash in relation to the business that it had to support, in other words.

Hearing Examiner Haycraft: I said, what was the ratio?

The Witness: The old Clorox Company had excess cash of four million dollars when we acquired them, to support a business of forty million, approximately.

Hearing Examiner Haycraft: Forty million dollars annually?

The Witness: Forty million dollars annually.

Now, Procter and Gamble——

Hearing Examiner Haycraft: Ten to one then?

The Witness: Ten to one.

Procter and Gamble at that time had an annual business of a billion two hundred million. It is a little more than that now. I think that is the approximate figure at the time we acquired it. To have anything like comparable cash in relation to its needs, Procter and Gamble would have needed

(Tr. p. 5511)

one hundred and twenty million dollars in excess cash over and above its operating requirements.

It had nowhere near that amount of money. In fact, just shortly before we acquired it we were forced to go out and borrow some one hundred million dollars and we had already some additional loans, that was on top of some short-term loans that we had.

The point is that in relation to the needs of the business, the Clorox Company was much better fixed than was Procter and Gamble. But, quite apart from the arithmetic, the Clorox Company had all the cash that it could possibly use within any kind of reasonable interpretation to do almost anything that it wanted to do.

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(Tr. p. 5512)

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Q. How about the brains or management situation?

A. Well, I use the word "brains" or "management"; by that I mean all types of business competence or all types of competence in business.

Q. What is the practical situation as to that in relation to the Clorox Company?

Hearing Examiner Haycraft: You understand the witness has to have a certain amount of modesty on that, managment and ability of the present Procter and Gamble Company.

The Witness: I think I can make this statement fairly factual with due regard for being modest.

I don't think there is any evidence in the facts, I am not talking about evidence in a case.

Mr. Royall: Don't do that. Start over again on that.

(Tr. p. 5513)

The Witness: All right.

By Mr. Royall:

Q. Do you know of any facts? A. Well, what I was going to say as a conclusion was this, then I will support it.

There is no way that I can see that anyone can conclude that Procter and Gamble could have done better with the Clorox brand than the old Clorox management did.

Q. Now, what are the facts on that? A. Well, you can look at it any way you wish. You can look at its growth record, you can look at its return on capital invested, you can look at its percentage of profit on dollar sales, you can look on the position it achieved in the bleach market, you can look at it from any angle you wish and you must conclude that that was a remarkably successful business and you don't get that kind of success without very competent management.

I would like to think, and here's where the modesty might come in, for example, I would like to think we could have done as well, I am not at all sure we could have or would have, but certainly I don't think that there is anything in either our figures or their figures which would indicate we could do anything better.

Q. Now, Mr. Morgens, in the question of power—— A. I had a third factor there.

(Tr. p. 5514)

Q. Excuse me; complete your statement. I am sorry. A. My third factor was, maybe a little more difficult to describe. It refers to the restraints on the use of money and brains which are imposed by good business practices

and judgment and common sense. Those restraints are very real. For example, an insane man in one sense has a lot more power than a well-balanced one or a man of good judgment. An insane man is more to be feared, his power is more to be feared than that of a normal person.

Similarly, an irresponsible and arbitrary management in the hands of a closely held company could starve one part of its business in order to gorge another part, and that would be a form of business insanity, and I don't think that kind of insanity can be assumed; certainly I don't think it can be assumed for Procter and Gamble. The restraints on us are no less real than the restraints that were on the old Clorox Company.

Q. Now, Mr. Morgens, your statements as to the conditions which you have described in your last several questions, that is, conditions as to Clorox Company and as to Procter and Gamble, based upon your observation of facts or not, actual existing facts? A. Would you repeat your question, please?

Q. Are your statements as to what you could do from a managements' standpoint and from a dollar standpoint, are they based upon your actual knowledge and observation of the

(Tr. p. 5515)

Clorox Company and the other Procter and Gamble operations? A. Based on my knowledge of the facts and my judgment, both.

Q. And your judgment, applied to those facts? A. Applied to those facts.

Q. Mr. Morgens, as a factual and practical matter and not from a theoretical standpoint or from a strictly legal standpoint, does Procter and Gamble have any more power within the liquid bleach industry than Clorox Company

or its predecessor have? A. I don't think so, and for the reasons which I have just explained.

Q. Now, assume what you say is not a fact and—strike that out.

Even if you did have greater power and were willing to use it, would it be from a business standpoint advisable for Procter and Gamble to do so? A. I don't think as a practical matter, I think I have testified on this before, that Procter and Gamble any more than the old Clorox Company could increase over any period of time Clorox share of market almost no matter what it did within any kind of reasonable limitations.

I think in previous testimony I have gone in considerable degree the reasons for that. Certainly if we were able to do it I think the cost of so doing would be much greater than any additional profit and any additional volume that might

(Tr. p. 5516)

secured.

Q. Is that statement of yours based on facts and your business judgment which in turn is based on your experience in this field? A. I think I can say, Yes, to that.

Q. Now, Mr. Morgens, you testified about a year ago, on page 888 of the record, in substance, that you believe that Clorox distributor set up to be an excellent method of distribution and that, in your opinion, that it had been successful.

Have you since that time had an opportunity to observe this Clorox distributor system and have you kept up with it, in other words, since your prior testimony? A. Yes, I have.

Q. State whether or not anything has occurred in the past year which would change the observation you made in the testimony before? A. There has been nothing; I

don't recall my exact testimony on that exact page, but what I said at that time I believe more than ever sold as a company on the Clorox distributing organization than we have ever been.

Q. Why are you so more than ever? A. Because it is effective.

Q. Why? A. Because it is effective.

(Tr. p. 5517)

Q. You testified also about a year ago, on transcript 626, that the Clorox distributing system was operated separately from the Procter sales organization. Is it still so operated? A. Yes, it is; completely separate.

Q. Based upon your knowledge of the distributor system and your prior and existing knowledge as to Procter and Gamble, do you have any plans now to change this distributor system of Clorox?

* * * * *

The Witness: We have no such plans.

By Mr. Royall:

Q. Do you know of any reason for foreseeable reason why

(Tr. p. 5518)

would change that system? A. No, it is working well, it is economical, we don't believe in tearing down something that is functioning well. We don't advance in business by tearing down, we advance by building on what's good.

Q. Now, Mr. Morgens, about a year ago, at transcript 828, you testified in substance that Clorox was not spending any more per case on advertising and promoting Clorox than did the old Clorox Company. After this lapse of time do you at the present time know of any reason

why this expenditure per case should be increased? A. No, I don't.

Q. Has it been increased? A. It has not.

Q. Can you give us the reasons why you do not now see any basis for increasing it, factual reasons? A. I don't know whether you would call this factual or not but it is sound policy to continue something which is working well. This case-rate is working well in relation to Clorox.

Q. Is that based upon your observation, factual observation, and upon your business judgment? A. Yes, it is.

Q. Now, do you now, at this time, know of any reason why that expenditure rate should be changed, rate per case

(Tr. p. 5519)

should be changed for the future? A. No, and I know a lot of reasons why it shouldn't be changed.

Q. What are some of those? If there is anything in addition to what you have said? A. It gets into a philosophy of how you manage advertising budgets.

Q. I am speaking now of the distributor system. A. No, the advertising——

Q. I am sorry; the budget, yes. Go ahead, sir. A. When you find either by historical record or by experimental endeavor that you must do on a new brand what the right expenditure per case is you stick with it, we stick with it, as a matter of sound policy. One can always get arguments that it should be bigger, the enthusiasm of a person thinks it should be bigger, but you stick with that per-case rate when it is working well and you are very happy to stick with it because it takes out of the whole area of decision the guess work and the judgment and enthusiasms that come from advertising agency people occasionally.

Q. Now, is that statement of yours based on your practical observation of this per-case rate and upon your business judgment which is in turn based on your experience? A. It is.

Q. Mr. Morgens, since the acquisition have you or anyone

(Tr. p. 5520)

else for Procter and Gamble at any time changed or sought to change the advertising and promotional policies of the Clorox Company?

I would like a yes or no answer on that, sir. A. No.

Q. Have you ever changed or sought to change the advertising policy followed by the Clorox Chemical Company? A. No.

Q. Why have you not sought to make any change in the advertising and promotional policies? A. Because, in our judgment, those policies were working well.

Q. Did your decision or your opinion or view not to change have any relation with this litigation? The pendency of this litigation? A. No. It is a very important point to Procter and Gamble to keep the operating people free from bother or concern with the litigation that we are in and we carry out that policy to the maximum extent of our ability. We try to separate the two. Operating people can not operate well, and in a highly competitive business they must operate well, and they can't operate well if they are constantly worried about a lawsuit.

Q. What I really intended to do, Mr. Morgens, was to ask you a question which has been asked of other witnesses,

(Tr. p. 5521)

possibly of you, I want to ask it as of the present time: Did the pendency of this litigation have any effect upon

your opinion as to whether or not the advertising and promotional policy of Clorox should be changed? A. It did not.

(Tr. p. 5522)

Q. Now, Mr. Morgens, about a year ago, at transcript 658 you testified that any product with a market share as high as Clorox was vulnerable to competition and you said that your major hope was that you would be able to hold somewhere near the share of the market held by Clorox.

Now, since that time, since the time you testified, have you had further opportunity to observe the operations of Clorox? A. Yes, I have, obviously.

Q. What is your present opinion as to Clorox substantially increasing its present share of the market? A. My opinion is still the same as it was.

Q. Do you want to express that opinion as of now? A. Well, I think Clorox or any product with that high a share of market is vulnerable. All of Procter & Gamble's history proves that point. I think I have testified in more detail in the past.

Q. Yes, you have. A. I can go over it again if you wish.

Q. No, sir, we do not. Your opinion is now the same? A. Absolutely.

Q. Now, is that based upon your knowledge of the practical facts of operation and upon your best business judgment? A. It is.

Q. I would ask you, Mr. Morgens, if, based upon your

(Tr. p. 5523)

practical experience with the Clorox Company since Procter & Gamble acquired it, and based upon your business judgment, has the acquisition of Clorox improved the competitive position of Clorox in the liquid bleach indus-

try, and if you want to comment or give your opinion as to various aspects of it please do so. A. In my judgment, my considered judgment, the position of Clorox in the bleach industry has not been changed in any way by its acquisition by Procter & Gamble. I can think of no way that it has been changed, not as to shelf space, I have testified on that; not as to store distribution; not as to in-store displays; not as to manufacturing; not as to advertising; not as to promotional abilities; not as to anything as I have been able to evaluate it.

Q. Is that opinion of yours, Mr. Morgens, based upon your practical knowledge and observation of the operation of Clorox after the acquisition and upon your business judgment based on experience? A. It certainly is.

Q. In your opinion, based upon such observation and business judgment is it your present opinion, present view or opinion, that Clorox will improve its competitive position in the liquid bleach industry by reason of the acquisition by Procter & Gamble? A. The only change in your last two questions is a "will"

(Tr. p. 5524)

for a "have."

Q. Has it now and is it your present opinion whether it will? A. For the same reasons I don't think it will. It has not for those reasons I gave. It will not for the same reasons in my judgment.

Q. Now, based on the same factual knowledge and information and on your business judgment, to what extent has the acquisition of Clorox by P&G affected the competitive positions in the bleach industry? A. It follows, I believe, that if the acquisition of Clorox by Procter & Gamble has not affected the competitive position of Clorox within the bleach industry, that hasn't affected the competitive conditions in that industry.

Q. And based on the same factual knowledge and observation and upon your business judgment is it your present opinion that it will affect it? The acquisition will affect the—— A. No, it is not.

Q. Mr. Morgens, on the general question of power in the business sense do you know of any way which you have not been asked about in which any such power in the business sense could be applied in the operation of the Clorox Company to the detriment of other bleach manufacturers? A. The only way I can answer that question is that we have no more power, and this is a repetition, we have no more

(Tr. p. 5525)

power within the bleach industry for the reasons I mentioned than the old Clorox Chemical Company had.

Q. Is that opinion based upon your factual observation and knowledge of the Clorox operation up to this time and upon your considered judgment? A. It is.

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(Tr. p. 5526)

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Hearing Examiner Haycraft: Do you wish to make a motion at this time to strike that testimony from the record?

Mr. Tincher: Yes, sir, I certainly do.

Hearing Examiner Haycraft: The motion is granted.

Mr. Royall: Does that apply to all of it?

Hearing Examiner Haycraft: All that he has given this morning.

Mr. Royall: Yes, sir.

All right, come down, Mr. Morgens.

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William G. Werner—Direct

(Tr. p. 5527)

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William G. Werner

was recalled as a witness for the Respondent and, having been previously duly sworn, was further examined and testified as follows:

FURTHER DIRECT EXAMINATION

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By Mr. Pride:

Q. Mr. Werner, I show you a document which has been marked Commission's Exhibit 27 and ask you if you recognize that document (handing document to the witness)? A. Yes, I do.

Q. Did you personally deliver that document to the Federal Trade Commission? A. I delivered it on June 17, 1957, at a conference with Mr. Sherman Hill, Messers. Hall, Briggs, and Smith, in the offices of the Federal Trade Commission.

Q. In Washington?

(Tr. p. 5528)

A. Yes, in Washington.

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(Tr. p. 5529)

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Bernard Franklin Trimpe

was called as a witness and, previously having been duly sworn, was examined and testified as follows:

Mr. Royall:

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Your Honor, I am not going to argue about the ruling you have made but I want to make an inquiry

only. I think your ruling was wrong, but we have done a lot of talking about it, but here is the thing I want to know, of course it may relate to some other testimony. We may do that and there is another consideration after Mr. Trimpe's testimony we might want to recall Mr. Morgens for a question or two because we haven't had time to go fully over it with him, we just got the first question.

What I wanted to ask you is this, there was some testimony there of Mr. Morgens that there had been no change

(Tr. p. 5530)

after the acquisition in the promotion methods and policies.

Hearing Examiner Haycraft: That is not relevant or material in this sense, that whether there has been or not would not have any bearing on the power to do it, admittedly they could have changed if they had wanted to.

Mr. Royall: You mean legally.

Hearing Examiner Haycraft: It is within the power of Procter & Gamble to fire the whole Clorox staff tomorrow and put their own men in there. It is within their power to discontinue their distribution through the methods they are using now, the brokers and make it a part of Procter & Gamble. The fact that they haven't done it is neither here nor there.

Mr. Royall: I don't want to get into anything——

Hearing Examiner Haycraft: That is from your standpoint.

Mr. Royall: The legal power.

Hearing Examiner Haycraft: That is what I am talking about and that is what we have to decide this case on.

Mr. Royall: Of course, I don't want to argue, but I don't think so, I think power within the reasonable business judgment is the test.

Hearing Examiner Haycraft: That, of course, you will have to decide in court, it never has been, but maybe you can establish it.

(Tr. p. 5531)

Mr. Royall: Yes, sir. In other words, any corporation has the power to do anything with its business.

Hearing Examiner Haycraft: Within its charter.

Mr. Royall: Within its charter which is pretty broad in all of them, therefore——

Hearing Examiner Haycraft: About the only defense on that point, it seems to me, would be that it was without the power to ultra vires and then you could amend the charter if you wanted to.

Mr. Royall: I wasn't thinking of getting into the legal part of it.

Hearing Examiner Haycraft: That is the reason I am letting you put all of this in so you can argue that before the Commission.

Mr. Royall: I realize that, your Honor. One other thing I wanted to clear up, I don't want it to appear and I don't think it does appear, but I want to be sure it doesn't: I don't want it to appear that these gentlemen didn't have an opportunity to cross-examine.

Hearing Examiner Haycraft: Well, they did have, sure.

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(Tr. p. 5534)

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DIRECT EXAMINATION

By Mr. Royall:

Q. Mr. Trimpe, I believe the record shows, anyway I will ask you, is it not a fact that you were with the Clorox Chemical Company from 1955 until the acquisition and

remained with the Clorox Company from August 1, 1957, the date of the

(Tr. p. 5535)

acquisition, until the present time? A. That is correct.

Q. During that period have you had an opportunity to observe the marketing activity particularly of the Clorox Chemical and of the Clorox Company?

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(Tr. p. 5536)

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Mr. Royall: Read the question. I don't know whether he has answered it or not.

Hearing Examiner Haycraft: He did answer it, yes.

Mr. Royall: All right.

By Mr. Royall:

Q. Now, based upon the facts you know and upon your experience in marketing and your best business judgment, what effect has the acquisition had on the marketing of the product Clorox?

Mr. Tincher: We object to that, sir.

Mr. Royall: That is a series, your Honor——

Hearing Examiner Haycraft: That comes within my ruling.

(Tr. p. 5537)

Mr. Royall: That comes within your ruling; yes, sir. I said the first ones were.

Do you want me to tender it, your Honor?

Hearing Examiner Haycraft: No, you go ahead and answer it and you move to strike. A. None.

By Mr. Royall:

Q. Based upon the same considerations that I mentioned and your business judgment what effect has the acquisition

had on the competitive situation of Clorox in the bleach industry? A. None.

Hearing Examiner Haycraft: Stricken.

I understood you have an objection to anything of that kind.

Mr. Tincher: Yes, sir, I was going to wait until he gets through with the whole series.

By Mr. Royall:

Q. Based on the same knowledge and judgment and experience, what effect will the acquisition, in your opinion, have on the marketing of Clorox? A. None.

Hearing Examiner Haycraft: Stricken.

By Mr. Royall:

Q. On the same basis, in your opinion what effect will the acquisition have on the competitive situation of Clorox in

(Tr. p. 5538)

the bleach industry? A. None.

Hearing Examiner Haycraft: Stricken.

Mr. Royall: Read that question over, please.

(Question read.)

By Mr. Royall:

Q. Based upon the same knowledge and your business judgment and experience, what effect will the acquisition have on the competitive situation in the liquid bleach industry? A. None.

Hearing Examiner Haycraft: Stricken.

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By Mr. Royall:

Q. The stimony, Mr. Trimpe has shown that Clorox used the 2, 4, 6, price off label and the 3, 5, 7, price off label,

the coupon packs, and newspaper and merchandising packs, all of these after the acquisition.

Why were these promotions used?

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(Tr. p. 5539)

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A. In every instance we used those special packs to counter the introduction of a new Purex bottle.

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(Tr. p. 5540)

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Q. In the Clorox Company since the acquisition what part do you have and what part does Mr. Bellingall have in the determination of the promotions to be used? A. I am an officer of the company.

Q. Yes, sir. A. And as vice president of the company I have responsibility for the sales.

Q. Yes, sir. A. And I am in a position to state what I think should be done in regard to a particular competitive situation. And the only thing I do with Mr. Bellingall is when I make up my mind what I think we should do, through our advertising manager, Mr. Shaffer, get with Mr. Bellingall and get his

(Tr. p. 5541)

recommendations from the agency as to what they think is the best means to meet the situation, but it is based on my telling them that we must do something in a particular area, that I want to do something in a particular area.

Q. What is that? A. That I want to do something in a particular area.

Q. Now, was that the method in which these promotions which I mentioned, the 2, 4, 6, price off label, the 3, 5, 7,

price off label, the coupon packs, the newspaper coupons and the merchandise packs, were handled? A. Exactly.

Q. And did the personnel that you mentioned determine the matter? A. I determined that we had a problem and they working with me came up with what they thought was several solutions and I chose one and then they executed it in the sense of putting——

Hearing Examiner Haycraft: By "they" you mean the advertising people?

The Witness: The advertising people, Mr. Bellingall mainly; he is the man I work with.

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(Tr. p. 5544)

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By Mr. Royall:

Q. State whether or not in these promotions you have described were used in every instance where Purex introduced its new bottle and if there was a difference, why the difference?

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A. As I have indicated, we tried to use the best judgment that we had to meet the situation and that was a variable situation, so that in some instances we used a cents off label and in another one we used a merchandising pack. In some instances we decided we would increase our advertising support in a particular market. Sometimes we happened to be having a fall or spring promotion going on so we would

(Tr. p. 5545)

interrupt that. In some markets we did nothing, but——

By Mr. Royall:

Q. What did that decision and selection depend on?

A. Well, it depended primarily on my analysis of the individual situation, my business judgment in regard to this competitive activity on the part of Purex with the introduction of this new bottle.

Hearing Examiner Haycraft: Is that the three-quart bottle or the half?

The Witness: No, sir, if I can go off the record——

To answer, your Honor, to say something nice about the Purex Company, they have come out with a very attractive bottle and I consider it a very strong competitive factor.

Hearing Examiner Haycraft: That is the one that has the handle on it?

The Witness: Yes, sir.

Hearing Examiner Haycraft: What size?

The Witness: On the quart and on the half gallon and on the gallon.

Hearing Examiner Haycraft: What exhibit did you call my attention to?

Mr. Tincher: Sir, Commission's Exhibit 455 is the brochure that introduced the bottle, has the complete story on it.

The Witness: I don't know what I said, but we

(Tr. p. 5546)

felt this was one of the strongest competitive things that happened to us.

Hearing Examiner Haycraft: I wanted to clear up in my mind because that was my recollection of the situation but when this was injected about the three-quart bottle recently I got confused.

The Witness: Well, they did introduce a three-quart bottle along with the Roman Cleanser Company prior to this, but we immediately met it and got a bottle of our

own, but in checking the trade and in checking their distribution and the reaction of the buyers we found that this was not going to be accepted.

* * * * * *

By Mr. Royall:

Q. Now, Mr. Trimpe, I believe it has been testified that a five cents off label was used by Clorox after the acquisition, that is sometime in 1958, I believe, and where was that used? A. It was used in the area surrounding Chicago, in Wisconsin, Illinois, in seven distributors' territories.

Q. And what was the purpose of that?

(Tr. p. 5547)

A. To counter a series of five cents off label packs of Linco and Roman Cleanser.

Q. Well, why did you not put that into effect before 1958?

* * * * * *

A. I don't think it is true I didn't do anything to meet this situation as I understand your question.

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Hearing Examiner Haycraft: I told you he had already answered it. It didn't develop until then, that is the

(Tr. p. 5548)

story, to just boil it down to a nutshell, it hadn't gotten to the point where we thought it was necessary.

Mr. Royall: Is that the situation?

The Witness: No, I think I took measures in the earlier part of that development that I thought were the answer but they didn't work out and if there is anything to go on the record is I just didn't move as fast as I should have against that situation. That is all.

By Mr. Royall:

Q. Now, were any of these promotions that I have described this morning suggested by the Procter & Gamble Company? A. Absolutely not.

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(Tr. p. 5551)

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CROSS-EXAMINATION

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(Tr. p. 5552)

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By Mr. Tincher:

Q. I will refer you to your testimony at page 4368, line 25 and at 4369, line 1 (handing document to the witness). A. This had to do with the opening of a new plant in Ohio. The Examiner asked me if we took any overt act when we knew of a competitor operating a new plant. I had referred to the opening of a Fleecy White plant, and I said that we didn't wait until some overt act, that we notified the distributor about it and tried to straighten up the sales force and check up our retail distribution on the sizes.

(Tr. p. 5553)

Is that what you are referring to?

* * * * *

Q. I am referring specifically to your language that you don't change price when a competitor changes price or method of distribution. A. We do not change our base price.

Q. Let me ask you, Mr. Trimpe, when you have a 3, 5, and 7 cents off or any amount of cents off on a label or

when you have a coupon, you have in effect changed your price, have you not?

* * * * * *

A. No, our base price is still the same to our distributors. Is that what you mean?

* * * * * *

Q. You still charge the distributor the same and the distributor takes the loss—— A. No, it is reflected all the way down through the trade.

Q. Yes. A. Yes.

Q. You charge the distributor less? A. Yes, and he in turn charges less and that in turn is reflected at the retail level.

Q. And that means that the retail grocer then sells the Clorox bleach at a lower price than he has been customarily

(Tr. p. 5554)

selling it? A. Well, we try—sometimes it happens, sometimes it doesn't, but we—that is the objective, certainly, of a cents-off label.

Hearing Examiner Haycraft: What he is trying to say, I suppose, is that in effect it is a price cut to the consumer, that is an inducement? A. Yes, to come in and buy more, yes.

Mr. Royall: That is——

The Witness: We have done that on a defensive measure and counter measure.

Hearing Examiner Haycraft: It is a temporary situation, that is the reason you put it on the label?

The Witness: That is right.

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(Tr. p. 5555)

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By Mr. Tincher:

Q. And that is the situation that would have occurred in Nashville, for example, when the Texas people moved into that market for the first time? A. That is the situation that occurred in Nashville when Purex introduced their new bottle.

* * * * *

Mr. Tincher: At record 4385, your Honor, you

(Tr. p. 5556)

said to make Mr. Trimpe show where he had lost shelf space where a private label had been introduced. We ask that question now, specifically where Clorox has lost shelf space where a private label was introduced? A. Any one of the two markets of Miami and Tampa with the introduction of Winn-Dixie's private label.

Hearing Examiner Haycraft: How many spaces did you lose there?

The Witness: I have both before and after figures on that and also pictures and I went down personally into the market and got to the supervisor of one of the Winn-Dixie operations and went into one of the stores and discussed it with him on the basis of the situation. We had at one time around 40 percent of the shelf space in those stores and when they came out with the private label they immediately split it into 50 percent for their private label, and the other bleaches on the shelf received the balance of the space which cut us down to about 25 percent.

By Mr. Tincher:

Q. When was that, sir? A. They introduced it in the early part of 1958 and I was in there—I will check my itineraries—I think about May.

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Bernard Franklin Trimpe—Cross

(Tr. p. 5557)

* * * * *

Q. Were any brands eliminated in that redistribution of shelf space? A. I think in the Miami market Roman Cleanser lost a size but nothing happened in the Tampa market and I am again pulling from my memory of my records, but again I can check that out.

Hearing Examiner Haycraft: You didn't lose any sizes?

The Witness: We didn't lose any sizes.

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(Tr. p. 5558)

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By Mr. Tincher:

Q. How many stores were involved in this situation, sir?

(Tr. p. 5559)

A. I will check it out again but I think Winn-Dixie have out of Tampa about seventy stores and about eighty out of Miami.

Hearing Examiner Haycraft: Did it have much of an effect on your volume of business?

The Witness: Yes.

Hearing Examiner Haycraft: Would you say that it affected it proportionately the same amount? In other words, I am trying to relate shelf space to the volume.

The Witness: Two things happened. First of all, they came in and cut down on the shelf space. Secondly, they refused to give us any more features. One of the big features in the Miami market happens to be gallons and we have an excessive volume on gallons in that market as compared to any other place in the United States. We have got a lot of wonderful features and I can give you the

exact dates of the features because we have good brokers down there and newspaper tear sheets. What it did was cut out our features. They have been featuring gallons for 29 cents in Miami, Tampa and Jacksonville against our 59 cents for the last five months, and it's just practically killed our gallons.

Hearing Examiner Haycraft: You mean on their private brand?

The Witness: Yes, they have a standard 29-cent price on gallons in that market.

(Tr. p. 5560)

Hearing Examiner Haycraft: And that would cut your volume?

The Witness: That is right.

Hearing Examiner Haycraft: With gallons being such a big volume.

The Witness: And the trouble with it is further that our half gallons are 33 cents so the consumer gets a better buy out of a gallon than she does on any of our sizes. It has hurt our business in Miami, particularly; less in Tampa, and I think we are doing fairly well in Jacksonville, as I remember the figures. But the big area was Miami, which is our big volume area.

* * * * * * *

Q. And you haven't used free premiums? A. We have used a self-liquidating premium in connection with our promotion.

Q. National drive? A. Yes.

Q. Specialized or regionalized? A. What is the date of today? I assure your Honor we wouldn't sit—we just couldn't let it happen. We are

(Tr. p. 5561)

going to announce, Mr. Tincher——

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Mr. Tincher: Ninth. My question is what have you done?

The Witness: Up to this time I have gone into the market, I have investigated the situation, and I am sure that was in May now. I felt that they couldn't continue the situation—I was wrong. We have continued to lose volume, this can be stipulated if that is the word, by IBM machines.

So, I came back and I said that I wasn't going to stand for it any longer, but I thought that the best thing we could do was to try to get some kind of an idea that they couldn't duplicate quickly, so I recommended a special pack on gallons only, and it has been put together and I think your Honor is right, I better keep still right now because I can't remember what day it is going to be announced, but I assure you it is to try to reestablish our gallon business on the market, Mr. Tincher, and up to that time the only thing we did was to try to hope that willy-nilly, I guess,

(Tr. p. 5562)

that they wouldn't be able to continue this price situation.

By Mr. Tincher:

Q. All right, from May 1958, getting back to my question, to December 31, 1958, you used no coupons in those two cities—— A. You are talking about newspaper coupons or off the bottle?

Q. Either one. A. We have not used them.

Q. Yes, you have not used them.

You used no premiums in addition to the regular premium on the national drive? A. No.

Q. You used no price-off labels? A. That is correct, we have not used any price-off labels.

Q. You didn't increase the per case allowance for advertising and promoting? A. We did not increase the per case allowance for advertising and promoting.

I can say one more thing that I think perhaps you should know about, your Honor; I spoke very highly of the Purex bottle. I assure you that the Clorox Company is not going to sit back and allow that to happen just as we didn't on the three-quarter one, so in the last year we have developed a bottle which we think is superior to theirs and we are

(Tr. p. 5563)

testing it in Florida. I forgot to mention that. We hope that our bottle in Miami, Tampa, Jacksonville, it is on all sizes, not gallons. That is another competitive step that we have taken.

By Mr. Tincher:

Q. You started doing that when, sir? A. I will have to get that, sir.

Q. On all sizes? A. That is right.

Q. And you raised your price ten cents a case? A. We did not raise the price.

Q. You didn't raise the price there? A. We did not raise the price in Florida on any of those sizes. This is a test market.

Q. That is as contrasted to raising the prices in Atlanta and in Buffalo? A. And that is a different style bottle.

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Bernard Franklin Trimpe—Cross

(Tr. p. 5568)

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By Mr. Tincher:

Q. Now, you testified at record 4882, and I will ask you if you recall the testimony, that a grocery chain in Philadelphia had raised the price of Clorox bleach and that other chains had followed suit.

* * * * *

A. Yes, I testified that in Philadelphia—is it necessary to repeat it?

(Tr. p. 5569)

Q. Well, did I do an injustice to what you said? Did I summarize correctly what you testified? A. You will have to read me what I said.

Mr. Royall: Tell him what you testified. Isn't it simpler, Mr. Tincher?

Mr. Tincher: She can read it.

(Answer read.)

The Witness: Yes, but that isn't all of it. I also said that this made our prices consistent in that market at the new high level and that it caused me a great deal of concern and I tried to work with the distributor in terms of trying to get an answer to it. We had not been able to find a satisfactory answer and that it cost us volume in the market.

By Mr. Tincher:

Q. Yes, sir, I am not saying you didn't testify to all the rest of your testimony: I am just bringing some of it to your attention. And that in essence was because the Clorox price was too high, is that right, at the grocery store? A. Well, it made our prices higher in that area than they had been for some time previously.

Mr. Royall: Mr. Tincher, what do you mean "at the grocery store?" You mean sold by the grocery store?

Mr. Tincher: Yes, on the shelves.

(Tr. p. 5570)

By Mr. Tincher:

Q. When was the date of this activity, sir? A. I will have to check my records again.

Q. You don't recall? A. I think I stated in the record but it has been going on for almost a year now, I think.

Q. Throughout most of '58? A. Yes.

Q. Let me ask you, Mr. Trimpe, if it isn't a fact that during that particular period of time some grocery chains were selling Clorox at a reduced price lower than its regular price to the public? A. That certainly is correct and the reason that was correct is this was one of the things we were able to attain. We went in and got the distributor to get some price features in order to get us, try to reestablish, this is a technique of selling, where you go in and try to get someone to feature your product at the old price or even lower if at all possible and in a market that is like that it was met and I think if you will check the record, tear sheets, you will see when one chain features it the others meet it immediately and if you will check my IBM records you will find that immediately solved our problem for a short period of time and we got some volume.

After that was over the price went back up again.

(Tr. p. 5571)

and we started losing volume again.

* * * * *

Q. I will hand you Commission's Exhibit 659 for identification, sir, and I will refer you to an advertisement of Clorox therein and I will ask you if this is not a Philadelphia example of the situation I was just talking about (handing document to the witness)? A. Yes, that is an example of the price feature that we got from one of the direct buyers in the Philadelphia market. It calls attention to two things, the fact that the price was 63 cents, regular 63 cents a gallon, that Clorox is featured at 49 cents. It does not in any way reflect a price reduction on our part but a feature on the part of the direct buyer.

Mr. Tincher: All right, sir, I think I will offer this exhibit.

(Tr. p. 5572)

Hearing Examiner Haycraft: To prove what?

Mr. Tincher: To prove this witness' testimony that during this period in Philadelphia they were losing business because Clorox was being sold too high by grocery stores. The converse was true, it was also being sold very low.

Mr. Royall: He already testified to that.

Hearing Examiner Haycraft: I don't see that it contradicts anything. I don't know whether there is any objection to it or not, but I am not going to take it.

By Mr. Tincher:

Q. You have just testified that there was a 14 cents difference at the retail level? A. Yes, sir.

Q. How was the grocer persuaded to make this 14 cent reduction? A. He was persuaded by what I like to think is a necessary function in our business and Mr. Fitzwater, who is our distributor, went in and discussed this situation, I am assuming in this case, with the Best

market. No, it wasn't Best; yes, it was Best, and he convinced them that Clorox was being carried at too high a price and on the basis of loyalty and many other factors and because primarily Clorox is still a very good loss leader to get traffic into the stores, maybe Best markets were suffering a little business volume and wanted to put in a series of features.

(Tr. p. 5573)

If you look at that ad there are features on other stabilizers.

Q. Like Crisco? A. I noticed there were several. Best markets have been sold, maybe he was able to sell them on a feature. I assure you the Clorox Company did not reduce the price to Fitzwater and he did not reduce his price to Best Markets.

Q. You got the same results as if you had? A. We got a price feature which we get daily because of the value of Clorox to bring customers into the store as a loss leader.

* * * * *

Q. I will hand you record 4915, sir, and ask you to read that (handing document to the witness).

(Tr. p. 5574)

* * * * *

A. Yes, I state that we have lost market share in the Southeastern part of the United States and I think that one of the factors is private label competition.

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Q. And that is subsequent to the acquisition as the question there indicates? A. Yes, that is when the private labels have gotten strong in the Southeast.

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Bernard Franklin Trimpe—Voir Dire Examination

(Tr. p. 5575)

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CROSS EXAMINATION (resumed)

By Mr. Tincher:

Q. Mr. Trimpe, just before lunch I showed you record 4915 and I asked you if you didn't testify at that point that in the Southeast Nielsen territory subsequent to the acquisition that you had lost market share because of private label brands? A. I did testify to that, sir.

Q. I will hand you at this time, sir, what has previously

(Tr. p. 5576)

been marked as Commission Exhibit 646 for identification and I will ask you if that isn't the Nielsen market share figures on the quart equivalent basis for the Southeast for a period of time including subsequent to the acquisition (handing document to the witness)?

And prior thereto, as well, for a given period of time? A. Well, that is what it says it is. I have never seen it before, and it is not information on which I base my judgment.

Q. It is Nielsen for the Southeast, though, is it? A. It is stipulated as that, I mean it is indicated as that, yes.

Mr. Tincher: We offer the exhibit, sir, with reference to this witness' testimony about Southeast.

* * * * *

(Tr. p. 5577)

VOIR DIRE EXAMINATION

By Mr. Royall:

Q. Am I correct, Mr. Trimpe, in recollecting that the private label problem is one of gallons? A. Well, may

I have a Nielsen to look at here for a minute or is that not possible?

Hearing Examiner Haycraft: Yes, you can ask for anything that will refresh your recollection.

Mr. Royall: Answer my question, it is primarily gallons?

The Witness: Yes.

By Mr. Royall:

Q. The paper he showed you doesn't purport to be confined to gallons, does it? A. No, it does not.

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(Tr. p. 5578)

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Hearing Examiner Haycraft: Objection is overruled

(Tr. p. 5579)

and Commission's Exhibit 646 will be received in evidence.

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The Witness: That is the reason I asked for this book, your Honor. When I came with the company in 1955 the share in the Southeast was 53.3, and by January of '57 it was 50.9, and in October-November, 49.2.

Now, in the early part of '58 we were concerned because, well, I was because I had lost four percentage points from 53.3 down to 49.2 in October-November of 1957. So, immediately after the first of the year, I still think it was May, but somewhere in that area, in the early part of January and February, we began to be concerned about it from the point of view of where did the problem lie? In what particular areas? So, I went on a trip down through the Southeast and into that trip we had Nielsen provided us with a per size break-out and we found that we had lost

20 percentage points on gallon volume in the Southeast, and that was where our problem was, and I don't remember exactly how I stated in there, but certainly, investigating the thing over a 90-day period we found that our problem was in private label gallons, not only in Florida, where I particularly made reference to because I was asked about whether we did anything in that area, I believe, but in other areas

(Tr. p. 5580)

of the Southeast.

So that is why we had a special run made. But over a long-range period we have lost about four percentage points and it has leveled off on pints and quarts and halfs reasonably well, but on gallons we are down 20 percent.

By Mr. Tincher:

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(Tr. p. 5582)

* * * * *

Q. You testified this morning that a new bottle in the Florida cities was different than the bottle used in Atlanta and Buffalo? A. Yes, sir; it was.

Q. Can you tell me what the difference is, by that I don't mean a scientific discussion, but by appearance? A. First of all in Atlanta and Buffalo we had it only on quarts, as you know, and it was a revision—first of all we have never had a handle on quarts, so we put—how can I describe it?—just a little circular place to put your finger with a lip on it to make it easier for the housewife to pour on the quart bottle.

Now, on the new bottles that we have in Florida we do not have a handle on the quart, we have only revised

(Tr. p. 5583)

the half gallon and gallon bottle to look a lot like this, also, but the Purex——

Mr. Pride: "This" meaning the water carafe.

The Witness: I am sorry.

Mr. Royall: Like this, what is that?

The Witness: The Purex bottle handle comes down and does not touch the bottom of the bottle, and the thing sticks out here——

Hearing Examiner Haycraft: Is the handle made out of some other material?

The Witness: No, it is made out of glass, but it is suspended in the air and it doesn't come back down and touch the bottle. Ours is made more like this, it comes back down and goes in and anchors at the bottom and we think this is a big safety factor in our bottle, and that is the difference.

By Mr. Tincher:

Q. Yours is a connected bottom whereas the Purex is not? A. That is correct.

Q. Thank you.

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(Tr. p. 5589)

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REDIRECT EXAMINATION

By Mr. Royall:

Q. Mr. Trimpe, there were a number of questions asked you about the southeastern situation and they were separated in time and I want to try to see just what your composite statement is.

As I understand it, you have some figures on the southeast territory, all sizes, for the period from '55 to January '58? A. Yes, sir.

(Tr. p. 5590)

Q. And what were the differences in percentages for that period? I think you stated. A. Roughly percentage loss of 4 percent from about 53 down to 49.2, something like that.

Q. Now, in the period of January did you or did you not have a special inquiry made there as to the effect on the various sizes of bleach bottles? A. Yes, we did, because I am on the record, I believe, to say that in the period '55 up to '58 we tried several things to try to stop that downward trend, including Negro radio.

Q. I understand, but did you—— A. Yes, we had a special size audit from Nielsen.

Q. These were directed to you as to the question of private label bleach? A. Yes, sir.

Mr. Royall: Your Honor, are you following me on this?

Hearing Examiner Haycraft: Yes, sir.

Mr. Royall: Because I think the record is a little confusing on it.

By Mr. Royall:

Q. Where does the main question arise as to private label bleach, with the quart or half gallon or gallon bottle? A. I am on the record, I believe, on the gallon size.

Q. On the gallon size?

(Tr. p. 5591)

A. Principally, although it is spreading now over the United States.

Q. It is spreading, but I mean at that time was that the principal one? A. The gallon size.

Q. Now, did you have your breakdown—I mean did you use this breakdown to make a special inquiry about the effect on the gallon sales in the private label stores? A.

Both in our own records and then we had a Nielsen breakdown made.

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(Tr. p. 5592)

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Q. Now, what did you find as to the increase or decrease of gallon bottles in that territory from the first of January to the last figures you had?

* * * * *

A. We are down 20 percent.

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(Tr. p. 5596)

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Mr. Royall: Your Honor, just a couple of matters I want to clear up and we have no further evidence to offer except I am a little uncertain of whether you admitted the Purex annual statement for 1958, and I thought you did.

Hearing Examiner Haycraft: Do you know the number of it?

Mr. Royall: 114.

* * * * *

Mr. Tincher: I have no question about its

(Tr. p. 5597)

authenticity, I have a question as to its relevancy.

Hearing Examiner Haycraft: The objection is overruled, you can see what you want to do with it.

Respondent's Exhibit 114 for identification is received in evidence.

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(Tr. p. 5605)

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Proceedings

Room 332
Federal Trade Commission
Washington, D. C.

Friday, 23 January 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * * *

(Tr. p. 5606)

PROCEEDINGS

Hearing Examiner Haycraft: All right, this hearing will come to order.

This is a hearing in the matter of Procter and Gamble Company, held for the purpose of entering a ruling on the record with respect to a motion to strike which was made at the conclusion of the last session by handing to counsel and to the Examiner a longhand written memorandum prepared by Mr. Tincher and Mr. Deveny.

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Hearing Examiner Haycraft: Taking up the various items seriatim,

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(Tr. p. 5608)

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Eleventh item, transcript 5162, lines 11 to 14, and 18 through 25, and page 5164, lines 1 through 24,—just 24 on that page——

Mr. Tincher: There, I think you skipped from Item 11 to part of Item 12. I think that is what caused the confusion.

Hearing Examiner Haycraft: I am only following your thoughts. Anyway, a motion to strike is granted.

Mr. Royall: On which?

Hearing Examiner Haycraft: From line 16 on page 5168 and from page 5164 through line 25.

Item 13, transcript 5165, line 4, motion to strike is granted.

Item 14, transcript 5167, line 21 through 25, is granted, in other words, they put an interim of part of the quotation there, the whole thing should go together. That is the reason—apparently when they lined this out, they did not include part of the answer, so the whole thing goes together.

And also, transcript 5168, lines 1 through line 4.

Item 15——

Mr. Royall: That was granted or not?

Hearing Examiner Haycraft: Granted. Motion to strike granted. Item 15, page 5168, transcript 5168,

(Tr. p. 5609)

beginning at line 8 through line 17, motion to strike is granted. I want to change that ruling, from line 8 to line 25 the motion to strike is granted, in other words, the whole thing goes together. You can't very well separate it. Motion to strike is granted.

Part of that same item, transcript 5169, lines 1 through 7, motion to strike is granted. Apparently part of that same item, because it does not have a different number, but transcript page 5170——

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(Tr. p. 5613)

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Mr. Royall: Your Honor, may I make a couple of statements, briefly? It wasn't left over, open on Mr. Morgan's testimony, you struck all of that.

Hearing Examiner Haycraft: Yes, sir.

(Tr. p. 5614)

Mr. Royall: Therefore, there was nothing left over, and we are not seeking to re-argue any one of these. I don't know whether this action of Your Honor will necessitate additional testimony for us or not.

The reason I say that is that possibly it might be that the form of the question, after it was the determining factor——

Hearing Examiner Haycraft: No, it was not. It was the subject matter.

Mr. Royall: And the same thing, I think applies to Mr. Morgens, it was not the form of the question.

Hearing Examiner Haycraft: No.

Mr. Royall: If it were, why we would want an opportunity to remedy it. But we will look over that, and unless we know today, there won't be any further requests, and I don't think there will be.

I want to say one other thing, I want to call Your Honor's attention again, it is already in the record, Your Honor's ruling, in the case of both of these witnesses, the record is in such shape, that Your Honor could, even after this ruling today, consider the matter.

Hearing Examiner Haycraft: That I could.

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(Tr. p. 5616)

Mr. Tincher: Counsel gave us a Nelsen study of the Southeast United States, division of liquid bleach sales by package sizes, and this has reference to the testimony of Mr. Trimpe, that Clorox had lost the market share of the Southeast in the gallon sizes. That testimony came in the last hearing, and you said we should be provided with the basis of that testimony.

We have been given that information and the information we are given apparently is a Nielsen report. We don't challenge that. It is for a period of time from August-September '57 to August-September of '58, and it breaks out sizes, pints, quarts, half gallons, and gallons including three quarts, and we can say that in the gallon size, including three quarts, the Clorox has had a market share decline, but because the gallon size does include three quarts, which of course the record shows Clorox does not make, we feel that this has no probative value one way or another with reference to Mr. Trimpe's testimony, and I will give this exhibit back to counsel at this time.

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(Tr. p. 5619)

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Mr. Tincher: I would like to inquire, sir, at this point, respondent said at the last hearing, if they didn't notify us by the 20th of January, that defense had closed, and I assume that is the case now, and we are prepared for rebuttal.

Hearing Examiner Haycraft: I understand so.

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(Tr. p. 5621)

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Room 332
Federal Trade Commission
Washington, D. C.

Monday, 26 January, 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5622)

PROCEEDINGS

Hearing Examiner Haycraft: This hearing will come to order. This is a hearing in the matter of Procter & Gamble, Inc., an adjourned hearing, the last hearing in this matter having been held on the 23rd day of January 1959, at which time adjournment was taken to reconvene in this place at this time, for the purpose of taking testimony in rebuttal by counsel in support of the complaint.

Mr. Royall: Your Honor, may I call one matter about the record to your attention.

In looking over the transcript for January 9, it has just come to our attention that the record fails to show an answer to a question asked Mr. Morgens on page 5503. The circumstances are, Your Honor, that we asked Mr. Morgens "Do you distinguish between legal power to determine matters relating to the company and power in the marketplace?"

* * * * *

(Tr. p. 5623)

* * * * *

His answer would have been "Yes," or was "Yes."

Hearing Examiner Haycraft: We can stipulate that, I think.

Mr. Tincher: Yes.

* * * * *

Hearing Examiner Haycraft: Well, anyway it can be stipulated that the answer would have been yes and it was then stricken.

Mr. Tincher: I assume whatever counsel says the answer would have been yes.

* * * * *

(Tr. p. 5626)

* * * * *

Alan C. Stoneman

was called on behalf of the Commission, and having been previously sworn, testified as follows:

* * * * *

(Tr. p. 5627)

DIRECT EXAMINATION

By Mr. Tincher:

* * * * *

(Tr. p. 5630)

Q. Now, Mr. Stoneman, we have had a considerable amount of testimony about the acquisition by your company of the Fleecy White brand of liquid bleach and will you tell us when that acquisition took place? A. Yes. It occurred in late October of last year.

* * * * *

(Tr. p. 5635)

By Mr. Tincher:

Q. Mr. Stoneman, speaking of the Fleecy White acquisition, will you tell us the business reason for Purex acquiring Fleecy White?

* * * * *

The Witness: There were several business reasons for the Purex acquisition of John Puhl Products Company, which owned Fleecy White liquid bleach.

One was that Purex had been unsuccessful in expanding its market position geographically on Purex liquid bleach. The economics of the bleach business, and the strong competitive factors as illustrated by our experience in Erie, Pennsylvania, made it impossible, in our judgment, for us to expand our market on liquid bleach. Fleecy White represented a brand that sold in fair volume in a limited geo-

graphical area and this area represented an expansion of our geographical area.

Fleecy White's cost of doing business was relatively high, compared to ours. Therefore, the integration of this

(Tr. p. 5636)

company with Purex might represent some economies. These economies were, principally, in the field of selling costs, in the field of delivery costs, that is, distribution of merchandise from the factories to the wholesaler or retailer, in the field of administrative costs, and advertising costs.

* * * * * *

(Tr. p. 5639)

* * * * * *

Q. Can you tell us from the date of your last testimony,

(Tr. p. 5640)

which concluded May 1, last year, as I recall, what promotions have been used by Clorox in Erie, Pennsylvania up to the present time.

* * * * *

The Witness: Competitive activity in Erie resulted in a decline of Purex market share to a figure somewhat below 10 percent. I believe the minimum was 7.

* * * * * *

The Witness: Prior to using the cents-off deal in September, there was a competitive promotion of an apron

(Tr. p. 5641)

premium in late July or August by Clorox. And subsequent to our cents-off deal, there was also a cents-off deal promotion by Clorox.

By Mr. Tincher:

Q. Did the subsequent cents-off deal that you referred to have a premium involved in it?

* * * * * *

The Witness: Well, the only premium I am aware of is the last July or early August apron premium. There may have been one later, I am not sure, Mr. Tincher. I have asked Mr. Northrup to prepare a schedule of the recent activity in the Erie market.

* * * * *

(Tr. p. 5652)

* * * * *

Q. Mr. Stoneman, are network television programs inappropriate for use with liquid bleach, because of the fact that there are regional producers of liquid bleach? A. No, we have used network television programs to advertise liquid bleach and we are a regional producer.

Q. And how do you do that sir? Is that a national program or how is it conducted? A. It is possible to split the country up into various segments, depending upon the circuitry of the network, and to advertise on a network program, say, in New York City, one product, and advertise a different product in Los Angeles at the same time. We did this frequently on the Perry Mason show.

* * * * *

(Tr. p. 5656)

* * * * *

Jack Northrup

was called as a witness for and on behalf of the Commission and being duly sworn assumed the witness stand and, upon examination, testified as follows:

Hearing Examiner Haycraft: Will you please give us your name and address.

The Witness: Jack Northrup, 9907 Shiloh, Whittier, California.

DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Northrup, by whom are you employed? A. By the Purex Corporation, Ltd.

Q. And what is your position with that company? A. I am Director of Marketing Research and Product Planning.

(Tr. p. 5657)

Q. How long have you held that position? A. I have had the title of Director of Marketing Research since 1957 and I have supervised those functions of the company since 1950.

Q. And what are those functions, sir? In other words, what are your duties? A. I direct the marketing research activities which include sales forecasting, sales and market analysis, consumer research and testing, and those kinds of activities.

* * * * *

Q. In the performance of your duties at the Purex Corporation did you utilize Nielsen Food Index for Liquid Bleach? A. Yes, we do.

Q. And at our request have you brought with you certain Nielsen data on liquid bleach? A. Yes, I have.

* * * * *

(Tr. p. 5692)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Tuesday, 27 January 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5693)

PROCEEDINGS

* * * * *

Alan C. Stoneman

resumed the stand as a witness for the respondent and, previously having been duly sworn, was further examined and testified as follows:

(Tr. p. 5694)

CROSS-EXAMINATION

* * * * *

(Tr. p. 5713)

* * * * *

By Mr. Royall:

* * * * *

A. May I add to that, generally, that that means in effect that the combined percent of the population to whom we offer Purex liquid bleach and Fleecy White liquid bleach is about 16, plus 48, or 64 percent.

* * * * *

(Tr. p. 5733)

* * * * *

Q. Now, Mr. Stoneman, you started making private label bleaches for the Von's Stores, in 1958, did you not?

* * * * *

The Witness: Yes, this, may I add, generally, that this is a brand I happen to have personal knowledge of. I don't

necessarily have personal knowledge of all of the brands of private label that we manufacture, when we started to make them or how much business we do in them.

By Mr. Royall:

Q. Sir? A. I said I don't have knowledge of all of the brands of private label when we started to manufacture them, or how much business we do in them. I do happen to know that we started to make Von's private label bleach in 1958.

Q. And how many stores do they have in Los Angeles? A. They have about 23, I think—about 25.

(Tr. p. 5734)

* * * * *

Q. Mr. Stoneman, do you now have a broker in Portland, Oregon?

* * * * *

A. Yes.

By Mr. Royall:

Q. And when did he start to work with you? This year, wasn't it? A. No.

Q. I don't mean this year. 1958? A. No. I am not sure when he started.

Q. It was since your last testimony? A. I testified that we had several brokers.

Q. I mean Portland. I said Portland came after your last testimony, did it not? A. It is possible; I am not sure, generally.

* * * * *

(Tr. p. 5737)

* * * * *

Proceedings

Jack Northrup

resumed the stand as a witness for the Commission and, having been previously duly sworn, testified further as follows:

FURTHER DIRECT EXAMINATION

* * * * *

(Tr. p. 5741)

CROSS-EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 5742)

* * * * *

Jack Northrup

was called as a witness for and on behalf of the Respondent and being duly sworn assumed the witness stand and, upon examination, testified as follows:

DIRECT EXAMINATION

* * * * *

(Tr. p. 5743)

* * * * *

Mr. Royall: Please mark this for identification.

(Whereupon, the document referred to was marked Respondent's Exhibit 117 for identification.)

* * * * *

(Tr. p. 5746)

* * * * *

Hearing Examiner Haycraft: 117 is received in evidence.

(Whereupon, the document referred to, heretofore marked for identification Respondent's Exhibit 117, was received in evidence.)

* * * * *

(Tr. p. 5751)

* * * * *

Mr. Royall: Now, your Honor, I am going to cross-examine the witness.

Whereupon,

Jack Northrup

was recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

(Tr. p. 5752)

CROSS-EXAMINATION (RESUMED)

* * * * *

(Tr. p. 5772)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Tuesday, 3 February 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5773)

PROCEEDINGS

* * * * *

(Tr. p. 5794)

* * * * *

Norman D. Smith

was recalled as a witness, and having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Deveny:

* * * * *

(Tr. p. 5876)

* * * * *

Mr. Deveny:

* * * * *.

Miss Reporter, may I have marked for identification as Commission's Exhibit 696-A through J for identification a document entitled Manufacturers of Liquid Bleach in the United States showing Dun and Bradstreet's estimated financial strength, product classification, 1957?

(The document referred to was marked Commission's Exhibit No. 696-A through J for identification.)

Mr. Royall: Your Honor, we have never heard or seen this before.

Mr. Deveny: It is so agreed. Respondent is just now being given a copy of it, your Honor.

By Mr. Deveny:

Q. Mr. Smith, is this 696A through J something prepared under your direction and supervision? A. Yes, it was.

Q. Was this generally, Mr. Smith, what does it show? A. Well, it shows the Manufacturers of liquid bleach in the United States as reported in Respondent's Exhibit 112 listing the manufacturer's name and its location. These companies were checked in the Dun and Bradstreet refer-

ence volume for their estimated financial strength and it is also

(Tr. p. 5877)

listed on the exhibit as well as the company's major product classification as reported by Dun and Bradstreet.

Q. Mr. Smith, why did you choose Dun and Bradstreet for running through this 112? A. Dun and Bradstreet reference volume is one of the volumes used by the Commission in checking the location of companies, some indication of their relative size.

Q. Well, you have indicated on here under the first column certain letters and footnotes, could you explain those to us, please? A. Those are code numbers, Dun and Bradstreet Code numbers for the estimated financial strength of the respective company. The classification or key to these code numbers are listed in appendix A of the exhibit.

Q. Now, the footnotes, I presume that is what they are, the numbers, 1, 3, 4 and 5 what are they, in that same column? A. Well, the footnotes are listed on the tabulation, in this case 3 indicates that the company was not listed in Dun and Bradstreet's reference book, and in the case of all companies not listed in Dun and Bradstreet they were checked in Thomas' Register of American Manufacturers and Thomas' Wholesale Grocery and kindred trades register which again are two sources used by the Commission in attempting to determine some information about companies which it wishes

(Tr. p. 5878)

to inquire about.

* * * * *

(Tr. p. 5880)

* * * * *

Mr. Deveny: Of course, the purpose of our offer, if you are interested, Your Honor, is to show that many of the items listed on 112 apparently are not in existence.

(Tr. p. 5881)

Hearing Examiner Haycraft: That is quite obvious.

Mr. Royall: I don't think there is anything to indicate they are not in existence, Your Honor,

Hearing Examiner Haycraft: I say that is the purpose of the exhibit, to indicate that.

Mr. Royall: But there is nothing on the exhibit——

Hearing Examiner Haycraft: If they are not listed in Dun and Bradstreet, the chances are they are not in existence, that is the purpose of that.

Mr. Royall: I don't think so, there is certainly no evidence to that effect. Many concerns that are in operation are not carried in Dun and Bradstreet.

Hearing Examiner Haycraft: Of any consequence?

Mr. Royall: That comes to significance and consequence, I don't know.

Hearing Examiner Haycraft: Any significance then? I will take your own term.

Mr. Royall: There are some small businesses——

Hearing Examiner Haycraft: I know.

Mr. Royall: And the number of them according to the evidence has increased rather than decreased and whether that is——

Hearing Examiner Haycraft: In my judgment, though, a concern that is so small that it cannot be listed either in Dun and Bradstreet or any of these well-known directories

(Tr. p. 5882)

such as Thomas Register is not of sufficient significance to have any probative value in this case.

Mr. Royall: Yes, sir.

Hearing Examiner Haycraft: I don't think we are bothered with them or anybody is bothered with them, they would certainly be a fleabite in volume so far as the effect of their competition. I am going to take the exhibit subject to your checking it and if you find that there is anything wrong with it, it will be subject to a motion to strike.

Mr. Royall: Your Honor, you won't limit me on my motion to strike.

Hearing Examiner Haycraft: You can move to strike it for any reason that you find necessary, I don't care.

Mr. Royall: All right, sir.

Hearing Examiner Haycraft: That is received.

(The document referred to, heretofore marked Respondent's Exhibit 696 A through J for identification, was received in evidence.)

* * * * * *

(Tr. p. 5913)

* * * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Wednesday, 4 February 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * * *

(Tr. p. 5914)

PROCEEDINGS

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(Tr. p. 5952)

* * * * * *

Mr. Tincher:

* * * * *

Now, I have what I allege to be a copy of the Procter & Gamble annual report for the year ended

(Tr. p. 5953)

June 30, 1958 which I would like to mark as Commission Exhibit 702. It is a paginated document in the lower right-hand corner, pages 1 through 15; and as Commission Exhibit 703 for identification a statement on the letterhead of the Procter & Gamble Company dated October 27, 1958 bearing the typed signature of the Chairman of the Board and the President of Procter & Gamble.

(The documents referred to were marked Commission Exhibits 702 and 703 for identification.)

Mr. Royall: Your Honor, I might shorten the matter, we will not deny as Procter & Gamble's statement for that year, while we haven't compared it I am confident that we can stipulate it is a correct report. However, I would object to it until it is shown to be relevant.

* * * * *

(Tr. p. 5956)

* * * * *

Hearing Examiner Haycraft: The objection will be overruled. Commission's Exhibits 702 and 703 for identification are received in evidence.

* * * * *

(Tr. p. 5976)

* * * * *

Hearing Examiner Haycraft: The mere fact that they shifted around and used different media, they may have done that before. In other words, that is something that

naturally any organization that has got a product to be advertised is going to try to get the best medium they can get for the amount of money they have to spend. If they find out that one medium does not give what they think it should and they are attracted to another they are going to change.

(Tr. p. 5977)

That is the normal procedure.

* * * * *

(Tr. p. 5981)

* * * * *

Norman D. Smith

was recalled as a witness, and having been previously sworn, testified as follows:

REDIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Smith, at our request did you, after your cross-examination by Mr. Royall, go to the library and check to see whether or not the Rose-Lux Chemical Company or Corporation, whichever it is, of Brooklyn, New York, is listed in the Dun and Bradstreet reports that you used in preparing your survey of the liquid bleach manufacturers?
A. Yes.

Q. Is it listed? A. Yes. The reason it was omitted on our exhibit is the fact that the name is mis-spelled on Respondent's Exhibit 112, Rose-Lux is listed as two words, and in actual fact is spelled one word, so in preparing the exhibit it was checked with the two word name rather than the full name Roselux, one word.

On page 2744 of Dun and Bradstreet they list the Rose-

lux (one name) Chemical Company, Inc., it is products designation 2819.

However, Dun and Bradstreet does not list any financial rating on the company.

(Tr. p. 5982)

Mr. Tincher: That is all.

Mr. Royall: Mr. Smith, you have not found any other instances of that, have you?

The Witness: No, we took our RX 112, the names as listed, it happened, it was called to my attention that Roselux is spelled R-o-s-e-l-u-x, one word rather than two.

Mr. Royall: So far as you know that is the only correction you want to make on the list?

The Witness: So far as I know, yes, sir.

Mr. Royall: All right, sir.

* * * * *

(Tr. p. 5997)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Tuesday, 10 February 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 6015)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Proceedings

Thursday, 12 February 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 6016)

PROCEEDINGS

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(Tr. p. 6023)

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Mr. Deveny: At this point, your Honor, I will read into the record the stipulation as agreed to by counsel for both sides of the case.

(The stipulation follows:)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION
In the Matter of
THE PROCTER & GAMBLE COMPANY,
a corporation.
DOCKET 6901
STIPULATION OF THE FACTS ON
THE CASE IN REBUTTAL

(Tr. p. 6024)

The following numbered, attached hereto, Commission Exhibits 707-A through P are copies of interview reports made through the joint efforts of respondent's representative, Robert W. Bergstrom, and Federal Trade Commission Attorney Examiner, Charles W. Johnson, with all bleach producers listed on Respondent's Exhibit 112 A-U for Chicago, Illinois, except Linco Bleach Company, Hy-

drox Chemical Company of Illinois, and O-So-White Products Company. It is agreed between counsel for respondent and counsel supporting the complaint that the exhibits correctly report the said interviews. Respondent does not agree that conversion or dilution does not constitute manufacturing. Counsel supporting the complaint believes that conversion or dilution does not constitute manufacturing.

It is agreed that the O-So-White Products Company manufactures liquid bleach for laundry supplies including sodium hypochlorite. It is further agreed that the Eagle Bleach Products Company is a division of Barton Chemical Company and that Eagle Bleach Products Company manufactures bleach for industrial use only and not for household consumption.

Also attached hereto are Commission Exhibits 708 and 709, letters from the Hydrox Chemical Company of Illinois and O-So-White Products Company. It is agreed between counsel for respondent and counsel supporting the complaint that the letters are authentic and reflect the views of the writers.

(Tr. p. 6025)

Counsel for respondent reserve the right to object to the exhibits on the basis of relevancy and materiality. This agreement in no way waives their rights with respect to these objections.

* * * * *

Hearing Examiner Haycraft: Do you agree to that stipulation?

Mr. Royall: Yes, sir, we agree to it and we have no surrebuttal on it.

Hearing Examiner Haycraft: What about these exhibits, does that stipulation refer to these Exhibits 707, 708 and 709?

Mr. Deveny: Yes, sir.

Hearing Examiner Haycraft: Are you going to offer these exhibits in evidence, 707-A to P, 708 and 709?

(Document was handed to the Examiner.)

Mr. Deveny: Your Honor, at this time we offer 707-A through P and 708 and 709.

(Tr. p. 6026)

Hearing Examiner Haycraft: Those are the ones that are mentioned in the stipulation?

Mr. Deveny: That is correct.

Hearing Examiner Haycraft: All right, they may be received in evidence.

(The documents heretofore marked Commission Exhibits 707-A through P, 708, and 709 for identification were received in evidence.)

* * * * *

(Tr. p. 6029)

* * * * *

STIPULATION OF THE FACTS ON THE CASE IN REBUTTAL

A. E. Gilfillian, Legal Department, American Stores Company, if called as a witness, would testify as follows:

1. The date on which Nu Way Stores began to broadcast Beamcast advertisements generally was May 7, 1956.

2. The dates on which Nu Way Stores introduced gallon and half gallon sizes of "Speed-Up," private brand liquid bleach was September, 1954, and quart sizes in April, 1955.

3. No brands or sizes of brands of liquid bleach were dropped by Nu Way Stores when it introduced "Speed-Up" private brand liquid bleach.

4. Nu Way Store purchases of liquid bleach by sizes and brands for the period beginning January 1, 1957, through September 30, 1958, are as follows:

(Tr. p. 6030)

Brand	Cases	Cost
QUARTS		
Speed-Up	2,758	$ 3,702.20
101	7,840	14,999.00
Clorox	16,705	31,678.85
½ GALLONS		
Speed-Up	3,231	4,221.46
101	10,455	18,440.33
Clorox	22,670	39,872.93
GALLONS		
Speed-Up	3,933	5,465.68
101	8,400	15,886.40
Clorox	20,872	39,303.05

6. Purchases for Clorox brand bleach by sizes for period October 1, 1958 through November 30, 1958 are as follows:

	Cases	Cost
QUARTS	1,620	$3,032.32
½ GALLONS	2,580	4,702.82
GALLONS	2,025	3,929.31

7. Nu Way Stores has 70 outlets at present, which cover a sales territory of western New York and the northwestern tip of Pennsylvania consisting of three stores.

* * * * *

(Tr. p. 6036)

* * * * *

Mr. Royall: Your Honor, we agree to the stipulation as read in the record.

* * * * *

(Tr. p. 6037)

* * * * *

Mr. Deveny: Your Honor, we would like to tender—it is my understanding that this is an agreed stipulation so we would like to have it——

Mr. Royall: It is agreed on, your Honor.

Hearing Examiner Haycraft: Let's hand it to the reporter.

What does this relate to?

Mr. Deveny: That relates to sales figres of Mr. Gardiner, 101 brand bleach, through LobLaw Stores and Nu-Way Stores, calendar years '57 and '58.

Hearing Examiner Haycraft: And you agree to that?

Mr. Royall: We agree to the stipulation, we want to make an objection as to relevancy.

(Tr. p. 6038)

* * * * *

Mr. Royall: Our objection to relevancy, your Honor, is that it covers the calendar years 1957 and 1958 and therefore does not disclose the conditions before and after the acquisition and, therefore, is not relevant to this.

Hearing Examiner Haycraft: This goes to conditions both before and after but not at the time.

Mr. Royall: It doesn't show the condition at the dividing line, and I don't want to argue that, your Honor, that may go to the weight more than anything else.

Hearing Examiner Haycraft: Your objection will be overruled on that and the stipulation will be received.

(The stipulation follows:)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION
In the Matter of
THE PROCTER & GAMBLE COMPANY
a corporation.

DOCKET 6901
STIPULATION OF THE FACTS
ON THE CASE IN REBUTTAL

R. A. Gardiner, President, Gardiner Manufacturing Company, Inc., if called as a witness would testify as

(Tr. p. 6039)

follows:

1. The following listed sales by cases and sizes are for the calendar years as indicated of 101 Brand Liquid Bleach to the LobLaw and Nu-Way Stores.

a. LobLaw Sales

	GALLONS	½ GALLONS	QUARTS
1957	14,194	18,390	13,740
1958	13,545	15,920	11,560
b. Nu-Way Sales			
1957	5,195	6,826	5,011
1958	4,739	5,430	4,140

* * * * *

(Tr. p. 6040)

* * * * *

STIPULATION OF THE FACTS
ON THE CASE IN REBUTTAL

L. S. Frantz, Vice President in Charge of Sales, LobLaw, Inc., if called as a witness would testify as follows:

1. Beam-Cast operations began in LobLaw's stores in September, 1951, but Beam-Cast's advertising of 101 brand liquid bleach began on August 4, 1958.

2. Beam-Cast merchandisers (girls) are permitted to visit the LobLaw's stores to check shelf representations of the products advertised and reports of these store visits showing out-of-stock conditions are sent to LobLaw from time to time.

3. The decision as to how much shelf space is to be allocated to a particular item is left completely up to the manager of the individual stores.

(Tr. p. 6041)

4. It is the policy of LobLaw organization not to allow the Beam-Cast people and employees to make such shelf space decisions for the store manager.

5. It is the policy of LobLaw organization that food broker's and manufacturer's representatives are not allowed to make such shelf decisions for the store manager.

6. LobLaw, Inc. issued a memorandum on July 13, 1957, to all of its LobLaw supervisors as follows:

"BEAM-CAST—Should there be any misunderstanding in regard to shelf facings of any or all merchandise in stores, kindly make *sure* your managers understand they are the 'last word' in determining the space to be given each and every item. In short, Beam-Cast representatives are not to dictate shelf facings on items using or not using this advertising medium."

7. On November 24, 1958, LobLaw, Inc. issued the following memorandum to all store managers:

"BEAM-CAST SHELF ALLOCATION

'The number of facings to be awarded to any Beam-Cast sponsor is entirely up to you, the store manager.

'Remember, you and you alone (as manager) are the judge of shelf allocation. Use your prerogative wisely.' "

(Tr. p. 6042)

8. On occasion, there may be a manager here or there, through either the fact that he is new or through the kindness of his heart, who might be persuaded to favor Beam-Cast items. However, if and when this happens, as concerns Beam-Cast or any other items, we feel reasonably certain that the Supervisor or Superintendent will remedy the situation.

9. No union contract agreement in Buffalo, New York restricts outside manufacturers or broker's representatives from going into the stores and offering their services.

10. To the best of LobLaw's knowledge, no communication to LobLaw store managers was issued as a result of a conversation with Mr. Bennett.

11. Mr. Bennett has voiced his opinion as to shelf representation but he is no different from any other food broker or manufacturer's representative.

12. Purchases of liquid bleach, August 1, 1957, through November 30, 1958, in Buffalo, New York warehouse of LobLaw, Inc. are as follows:

101 BRAND

SIZE	CASES	COST
Gallon	18,320	$34,954.02
½ Gallon	22,409	39,897.44
Quart	16,095	31,010.62

(Tr. p. 6043)

CLOROX

SIZE	CASES	COST
Gallon	47,465	$ 93,021.10
½ Gallon	58,806	107,867.06
Quart	40,774	79,770.84

13. LobLaw operates 100 stores out of the Buffalo, New York warehouse.

* * * * *

Mr. Royall: We have no objection to it.

* * * * *

(Tr. p. 6052)

* * * * *

STIPULATION OF THE FACTS ON THE CASE IN REBUTTAL

Lawrence Gordon, Executive Vice President of Beam-Cast, if called as a witness would testify as follows:

(Tr. p. 6053)

1. Beam-Cast Inc., operates spot announcement advertising over FM radio which is received on special equipment in grocery stores as well as on regular FM radios.

2. The company does not refuse advertising to producers of products competitive with products which Beam-Cast is already advertising.

3. No such assurances of exclusive participation are given the customers of Beam-Cast.

4. Employees of Beam-Cast are sent to stores broadcasting the announcements to check on the movement of items advertised.

5. Inventory is checked by employees of Beam-Cast with the store manager concerned to aid in eliminating out-of-stock conditions and to rotate perishable items.

6. With the store manager's approval, employees of Beam-Cast install shelf reservers to indicate the facings allocated to Beam-Cast items by the store manager.

7. In general Beam-Cast employees see to it that after the consumer's attention is called to a product by the spot

radio commercial, he will not be disappointed when he goes to the shelf.

8. Beam-Cast has received instructions in most stores that under no circumstances may its employees change any shelf facings unless they are authorized to do so by the

(Tr. p. 6054)

store manager.

9. Where an advertiser's product has received additional shelf space, it is not because Beam-Cast employees appropriated it, but because the store manager decided it was good business. When an in-store broadcast advertising one of our sponsor's products brings about an increase in consumer demand for that product in that store, the amount of shelf space allocated is often increased accordingly. But this represents the exercise of the manager's best business judgment, not the pressure exerted by Beam-Cast employees.

10. Shelf space is essentially a reflection of how fast a given product sells in a given store.

11. If an item advertised by Beam-Cast is found to be out-of-stock, it is called to the attention of the store manager by employees of Beam-Cast so that he can reorder the item.

12. Observations by Beam-Cast indicate that in the stores carrying the Beam-Cast advertising for 101 brand, Clorox has more shelf space than 101.

13. From its observation, Beam-Cast testifies that national advertising of a top brand name by the field's largest manufacturer is more effective than local in-store radio announcements.

14. Beam-Cast cannot overcome the tremendous

(Tr. p. 6055)

advantage of the large company with the big name.

15. Beam-Cast only tries to assist a smaller company, like 101, to compete more effectively with a leader, like Clorox.

16. Beam-Cast has been giving the Clorox distributor a run for his money and will continue to assist its advertisers to compete with Clorox as effectively as possible.

17. The attached list of clients designated as CX 711-A 7 B are the clients who are now participating on Beam-Cast as of January 22, 1959. As can be seen from this list Beam-Cast enjoys national manufacturers as clients and does not represent solely regional manufacturers.

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(Tr. p. 6056)

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Hearing Examiner Haycraft: Is that agreed to?

Mr. Royall: Your Honor, the stipulation agreed to subject to relevancy, we think that two of the paragraphs are irrelevant and a part of another one. I will read those if I may.

Your Honor, the two paragraphs I will take them up separately which we think are irrelevant. One is No. 13 which reads as follows:

"From its observation, Beam-Cast testifies that national advertising of a top brand name by the field's largest manufacturer is more effective than local in-store radio announcements."

Hearing Examiner Haycraft: That is the opinion and as you indicated in your statement awhile ago if you cross-examined him you might qualify somewhat, but it is relevant.

Mr. Royall: We think it is opinion evidence.

Hearing Examiner Haycraft: It is opinion evidence

and, of course, your objection as to its weight, would be as to its weight as to whether or not it would be received.

Mr. Royall: We don't think it is admissible, your Honor.

Hearing Examiner Haycraft: I think it is admissible. The objection will be overruled on that ground.

(Tr. p. 6057)

Mr. Royall: All right, the next one is 14.

"Beam-Cast cannot overcome the tremendous advantage of the large company with the big name."

That is the rankest sort of opinion.

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(Tr. p. 6058)

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Hearing Examiner Haycraft:

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I will sustain the objection as to this particular paragraph but not strike it. I mean, I will not make a finding based on that paragraph, paragraph 14.

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(Tr. p. 6067)

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Mr. Royall: Your Honor, there are two things we want to offer by Mr. Trimpe.

Your Honor will recall the discussions about the loss of sales in Buffalo and Atlanta.

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(Tr. p. 6068)

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Mr. Royall:

* * * * *

We have here a memorandum made in the regular course of business by Mr. Trimpe on June 20, 1958, addressed to

Mr. Fred Brown, President of Clorox, which deals with this question, and all we wanted to do was to have Mr. Trimpe identify this and offer it in evidence. That is the first question we have got.

* * * * *

(Tr. p. 6070)

Hearing Examiner Haycraft: 129 is what the number will be.

Are you objecting to it, Mr. Tincher? Mark it Respondent's Exhibit 129-A and B for identification.

(The document referred to was marked Respondent's Exhibit No. 129-A and B for identification.)

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(Tr. p. 6071)

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Hearing Examiner Haycraft: The objection is overruled, Respondent's Exhibit 129A and B for identification is received in evidence.

(The document referred to, heretofore marked Respondent's Exhibit 129-A and B for identification, was received in evidence.)

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(Tr. p. 6096)

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Hearing Examiner Haycraft: All right, this hearing stands adjourned. It means I am closing the taking of testimony when I close this hearing.

(Whereupon, at 12:25 p.m. the hearing in the above-entitled matter was adjourned.)

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(Tr. p. 6097)

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Room 532
Federal Trade Commission
Washington, D. C.

Tuesday, 16 June 1959

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 6223)

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Room 532,
Federal Trade Commission,
Washington, D. C.

Thursday, 30 November 1961

Met, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

APPEARANCES:

J. WALLACE ADAIR, Attorney for the Federal Trade Commission.

(Tr. p. 6224)

PROCEEDINGS

Hearing Examiner Haycraft: On the record.

This is a hearing in the matter of Procter and Gamble Company, Federal Trade Commission Docket No. 6901, to take further evidence concerning the competitive effects of respondent's acquisition of Clorox Chemical Company.

It is held pursuant to the direction of the Commission in order dated June 15, 1961.

Mr. Adair, do you have any statement to make at this time?

Mr. Adair: Yes, sir.

Mr. Examiner, for the past several weeks I have been in contact with respondent and we have at the present time been working on a stipulation as to the documentary evidence which we propose to offer on this record. At this time I request a recess for 24 hours, until tomorrow morning at ten o'clock, at which time I will offer in evidence certain documents, at which time I anticipate that I will be in a position to close the Commission's case on the remand.

Hearing Examiner Haycraft: I observe that the counsel for respondent is not present this morning. Can you account for that, Mr. Adair, just for the record?

Mr. Adair: Yes, sir. Counsel for respondent, as I understand it, does not recognize this as a valid hearing, and would feel that if they made appearance that would in

(Tr. p. 6225)

effect recognize this hearing. I anticipate that they will be present tomorrow morning and that we will be able to go forward to complete the case.

Hearing Examiner Haycraft: I might also say for the record, just to make sure that everything is thoroughly understood, that the Examiner as well as the Commission are defendants in the suit which has been brought by respondent calling for an injunction and a further proceeding as indicated by the remand which the Commission served on the Hearing Examiner in June 1961, and that my understanding is that this matter is pending in the court

and that perhaps some settlement will be made during the next 24 hours so that we may proceed tomorrow.

Mr. Adair: That is my understanding, also.

Hearing Examiner Haycraft: Then this hearing will recess at this time, to reconvene tomorrow morning at ten o'clock in Room 332—not 532, in Room 332.

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(Tr. p. 6226)

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Room 332,
Federal Trade Commission
Washington, D. C.

Friday, 1 December 1961

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examine

APPEARANCES:

J. WALLACE ADAIR and V. ROCK GRUNDMAN, JR., Attorneys for the Federal Trade Commission

KENNETH C. ROYALL, FREDERICK W. R. PRIDE, and ROBERT D. LARSEN, Royall, Koegel, Harris & Caskey, 1730 K Street, N. W., Washington 6, D. C., Attorneys for the Respondent.

(Tr. p. 6227)

PROCEEDINGS

Hearing Examiner Haycraft:

* * * * *

The purpose of this hearing is to take further evidence concerning the competitive effects of the respondent's acquisition of Clorox Chemical Company. It is held pursuant

to the direction of the Commission in an order entered on June 15, 1961. That portion of the order that relates to the subject matter of this hearing I shall read into the record at this time.

> "It is further ordered that this proceeding be and hereby is remanded to the Hearing Examiner for the reception of such evidence concerning the competitive effects of the aforementioned acquisition as may be offered in conformity with the views expressed in the accompanying opinion of the Commission."

In the opinion of the Commission in which it referred to the remanding, which I take it to be my instructions, the case will therefore be remanded to the Hearing Examiner for the reception of evidence relating to the competitive situation as it presently exists in the liquid

(Tr. p. 6228)

bleach industry.

> "This evidence should relate to events occurring subsequent to November, 1958, and should include market share data in each of the geographical regions specified on page 17 of the initial decision, as well as information directed to more clearly delineating the production and merchandising facilities and techniques which have been utilized by Clorox under the control of Respondent."

I wish also to state at this time that the injunction proceeding in the District Court which was brought by the respondent against the Examiner and the Commission, and which was pending yesterday—that is, at the time the hearing was held yesterday morning—has been resolved and an order has been entered in the District Court as follows:

"Plaintiff's motion for temporary restraining order coming on to be heard, and counsel representing all of the defendants having stated that the only evidence which will be offered on behalf of the Federal Trade Commission in the proceeding before that Commission, bearing Docket No. 6901, will consist (except to the extent necessary in rebuttal to any evidence hereafter introduced by Plaintiff) of documentary evidence all of which has been shown to Plaintiff's counsel today, and

(Tr. p. 6229)

the witness to authenticate such documents; and further, having stated that the introduction of such evidence will not consume more than two hearing days, December 1, 1961 and December 4, 1961, wherefore it is on this 30th day of November 1961 ordered that the motion for temporary restraining order is denied without prejudice."

"Signed by Joseph C. McGarragh, United States District Judge."

Gentlemen, what I have just read will be my guidepost in holding this hearing.

Mr. Royall: Your Honor, may I make a preliminary statement?

We do not believe that we are legally here, and we must state at this time that we do not waive the rights, such rights as we may have under the pending case.

In order to do that and to be sure that we have not waived the rights and that our position is clear, I would like to move before your Honor that you rule on it, the question of whether this case should now be dismissed. In making that ruling we certainly recognize that you are under orders to proceed, but still from our standpoint we do make that motion.

We move that this be dismissed on the ground stated in the complaint in the District Court, the material parts of which, somewhat abbreviated, I would like to put in the

(Tr. p. 6230)

record.

The grounds are that this attempted remand deprives Procter and Gamble of its property without due process of law and in violation of Article V of the Constitution; that following four years of investigation and trial it was the duty of the Commission to conclude the case instead of remanding it; that the order of remand was issued without any prior notice to Procter and Gamble; that the order violates the Clayton Act and the Commission's Rules of Procedure in that it purports to re-open the proceedings after all proceedings were closed without any showing of compliance or otherwise complying with the acts and rules of the Commission relating to re-opened proceedings; that the order was made arbitrarily, without even the request therefor by the Commission's counsel and without any showing to justify it; and that the order was made without any statutory right, but on the contrary was in derogation of the pertinent statutes and rules which have been mentioned and constitute a harrassment of the plaintiff in that case, respondent here, and that the order violates the requirement of impartial conduct by the Commission in that the Commission has acted not in a quasi-judicial capacity but in its prosecuting capacity for the purpose of giving to the Commission's counsel additional opportunity when the Commission itself has found that the evidence did not justify any relief against the respondent in

(Tr. p. 6231)

this action.

I make that motion. I do not care to argue it except to the extent I have presented it to your Honor.

Mr. Adair: Mr. Examiner, I don't want to argue it either, but I do oppose the motion to dismiss and I take the position that the respondent is properly before the Hearing Examiner and that this is a duly constituted hearing for the taking of testimony on the remand of this case.

I see no reason in the present posture of this case why you, the Hearing Examiner, should not at this time begin taking evidence as directed by the Commission.

Hearing Examiner Haycraft: In view of the fact that the Court before which counsel for the respondent presented their complaint has entered an order which I read a moment ago, in which they denied their motion for restraining order, I feel free to go forward. I am under a mandate from the Federal Trade Commission. The motion, in review of those two facts, is denied.

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(Tr. p. 6235).

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Mr. Adair: Next is Commission's Exhibit 718A-F for identification.

This document is identified on the first page as "Clorox Promotions, July 1958-Current."

* * * * *

The first column is headed, "First shipment date." The second is inked in, and headed, "Cost in M dollars," interpreted to be cost in thousands of dollars.

The third is, "Promotion," and the fifth is, "Area."

By way of explanation, we requested counsel to furnish us certain information with regard to the Clorox promotions. This is the information that they furnished us.

Proceedings

(Tr. p. 6236)

It has the column "Promotion," which is a brief description of the promotion, that is, the type of promotion, and then under, "Area," it identifies the area by broker area, that is, the Clorox broker area. So where you see the name "Raley," that refers to the broker area.

Then I have marked for identification as Commission's Exhibit 719 a map of the United States,——

* * * * *

(continuing) ——which I shall also offer with Commission's Exhibit 718 for identification, which is a map of the United States, which shows the geographic area covered by each of the named brokers shown under the column "Area" in Commission's Exhibit 718. The broker names are in little black boxes across the map.

The broker areas are identified on the map of the United States by the use of heavier black lines delineating certain counties and states of the United States.

I offer in evidence Commission's Exhibit 718A-F, and Commission's Exhibit 719 for identification.)

(Whereupon, the documents referred to were marked Commission's Exhibits 718A-F and 719 for identification.)

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(Tr. p. 6237)

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Hearing Examiner Haycraft:

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I also understand from an examination of this exhibit—so that we will know what we are talking about—that when you say "current" you mean it runs from July 1958 through July 1961.

Mr. Adair: That is what it actually does. I was just reading the title.

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(Tr. p. 6238)

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Mr. Pride:

* * * * *

We object, your Honor, to the admission of this evidence, the basis of that objection being that standing alone this listing of promotions and this description of them in and of itself is without significance insofar as any of the real issues of this case are concerned. And the reason for that is, among other things, that without some showing of the competitive situation, the competitive activities of other distributors of liquid bleach in the particular territories in which some one or more of these promotions were to be conducted, no deductions can be drawn as to any competitive effect or otherwise.

Furthermore, you will note that some of these promotions have opposite them the word "test," indicating, as explained by Mr. Adair, that the primary purpose of the promotion was to test or gauge the public reaction to that particular type of promotion. The primary purpose was not brought on by competitive considerations.

We simply feel, Mr. Examiner, that this information standing alone is not meaningful to you and will not be meaningful to anyone endeavoring to relate it to any issue in

(Tr. p. 6239)

this case.

Hearing Examiner Haycraft: What do you have to say to that, Mr. Adair?

Mr. Adair: Mr. Examiner, you will recall the record of this case; it shows that the pattern of promotions used

by Clorox before the acquisition and pretty much up to the time the case in chief was closed. This shows Procter and Gamble's pattern of promotions after the acquisition. It is our position that it is probative and material evidence of the type of competition and the changes in competition which Procter and Gamble has chosen to engage in since the acquisition.

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(Tr. p. 6242)

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Mr. Adair: You don't have any question, do you, Mr. Pride, that they are consumer promotions?

Mr. Pride: Just glancing at these I have no indication that they are not.

Hearing Examiner Haycraft: You will have an opportunity to disprove that. In other words, that is the nature of the offer.

(Tr. p. 6243)

Mr. Pride: Of course, amplifying what I have said, Mr. Examiner, there is no indication here whether any of these were conducted because of competitive influences coming into the bleach industry, not necessarily related to liquid bleach, but the impact of other competitive forces.

Hearing Examiner Haycraft: If you have any testimony on that point, you will be allowed to present it. I think, however, that this does come within the mandate of the remand. The exhibits will be received in evidence.

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(Tr. p. 6245)

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(Whereupon, the documents referred to, heretofore marked Commission's Exhibits 718A-F and

Proceedings

719 for identification, were received in evidence and ordered SEALED.)

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(Tr. p. 6247)

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Mr. Adair: The next series of exhibits relate to Nielsen information. The first is marked as Commission's Exhibit 720 for identification. It is entitled "Nielsen Food Index Territories." It is a map of the United States, broken down into the Nielsen areas.

(The document referred to was marked Commission's Exhibit 720 for identification.)

Mr. Adair: Commission's Exhibit 721-A through Z-45 for identification consists of pages from Nielsen's Food Index series which were subpenaed from the Purex Company and begin with the period December-January 1952-53.

Hearing Examiner Haycraft: For that year; that is the first year?

(Tr. p. 6248)

Mr. Adair: Yes, sir, this is the beginning of the series.

Hearing Examiner Haycraft: And runs through what period of time?

Mr. Adair: It runs through June-July 1961.

These tables relate to the consumer sales dollar basis at cost price to consumer.

Hearing Examiner Haycraft: On what product?

Mr. Adair: All the tabulations relate to bleach, household bleaches.

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(Tr. p. 6260)

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Hearing Examiner Haycraft: There is received, then, in view of the statement made by counsel, there is now

received in evidence Commission's Exhibits 720 and 721A-Z45, with the understanding that 721U, Nielsen Report for October-November, 1956, may be presented later but incorporated in this series of exhibits without further order.

* * * * *

(Whereupon, the documents referred to, heretofore marked Commission's Exhibits 720 and 721A-Z45 for identification, were received in evidence, Commission's Exhibit 721A-Z45 being ordered SEALED.)

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(Tr. p. 6261)

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Hearing Examiner Haycraft:

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Do you have anything further, Mr. Adair?

Mr. Adair: No, sir, that is all the evidence we have to offer.

(Tr. p. 6262)

Mr. Royall: I assume that closes the Government's case.

Hearing Examiner Haycraft: I assume so.

Mr. Adair: Yes, sir.

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(Tr. p. 6264)

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Room 532,
Federal Trade Commission
Washington, D. C.

Tuesday, December 12, 1961

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

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(Tr. p. 6265)

PROCEEDINGS

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(Tr. p. 6267)

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Mr. Royall: The evidence which we will introduce will cover the period covered by the complainant's evidence introduced last Monday and will be confined to that period.

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(Tr. p. 6268)

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I now offer as Respondent's Exhibit 133-A through Z and Z-1 through Z-44 these Neilson reports relating to market share on a 32-ounce equivalent basis, for each bi-monthly period from August-September 1952 through June-July, 1961.

As I say, these have been shown to the complainant and I now tender them in evidence, your Honor.

Hearing Examiner Haycraft: Is there any objection?

Mr. Adair: We have no objection.

Hearing Examiner Haycraft: Respondent's Exhibits 133-A through Z-44 are received in evidence.

(The documents referred to were marked Respondent's Exhibit 133-A through Z-44 and received in evidence and ordered SEALED.)

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(Tr. p. 6271)

Harry Nickelson

was called as a witness for the Respondent, and having

first been duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

Mr. Pride: Mr. Royall mentioned that Mr. Nickelson is appearing here voluntarily and the main purpose in enabling

(Tr. p. 6272)

us to expedite this proceeding, as has been said, he will testify to some of this Neilson data, present some tabulations and summaries from it and I would assume from your Honor's ruling, and I say this at Mr. Nickelson's request, that these two would have the same in camera status.

Hearing Examiner Haycraft: The exhibits may, yes.

By Mr. Pride:

Q. Mr. Nickelson, what is your occupation today? A. I am an executive vice president of the A. C. Neilson Company.

Q. Was that the same position which you held when you testified here before? A. No. My title has changed from vice president to executive vice president.

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(Tr. p. 6274)

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Q. Mr. Nickelson, as far as that exhibit 133 is concerned, does it provide a basis for comparing market shares for Chlorox liquid bleach for the four years before Procter and Gamble's acquisition of the Chlorox Company? A. Yes, it does.

Q. Do the figures there also provide a basis for comparing market shares for the four years subsequent to the acquisition? A. Yes, it does.

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(Tr. p. 6275)

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Mr. Adair:

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Furthermore, I would like to point out, sir, that as Mr. Royall has pointed out in this record, I find many, many times, there is a stipulation with regard to the Neilsen information, which in effect states—and I can quote you Mr. Royall any number of times—to the effect that it conclusively shows the Neilsen data, both consumer dollars and quart equivalents and the other that is mentioned here, is for the purpose of this case, relevant, competent evidence, and there is no distinction made.

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(Tr. p. 6279)

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By Mr. Pride:

Q. Will you tell us, Mr. Nickelson, as an officer of the Neilson Company, which of these two bases are a better guide, is a better guide for gauging market shares or market conditions.

Hearing Examiner Haycraft: I am going to tell the witness that I am going to pay attention to his testimony as an expert statistician, economist, what view, not as an executive of the Neilsen Company. That doesn't make any difference to me what executive position he may hold. That has no bearing on it. I want his personal opinion as an economist and statistician.

Mr. Pride: I don't want to hold Mr. Nickelson out as something I do not believe he would pretend to be. I don't think Mr. Nickelson regards himself as an expert economist, marketing expert, statistician, but simply as one who regularly has supervision over the collection and compila-

(Tr. p. 6280)

tion of that material.

Hearing Examiner Haycraft: Well, if you are not going to qualify him, I don't want his testimony.

Mr. Pride: I have qualified him as executive vice president of the Neilsen Company.

Hearing Examiner Haycraft: That is not a qualification that would satisfy me because they probably would be very happy to prepare these reports any way the client wants them.

Mr. Pride: Indeed. I am asking him on the basis of his experience——

Hearing Examiner Haycraft: Regardless of their opinion on it?

Mr. Pride: But I am asking him on the basis of his experience, which of these two bases is the better indicator of market conditions or market shares.

Will you answer that question, Mr. Nickelson?

The Witness: Well, I would regard the unit equivalent basis as the best basis to look at market shares, only because it is easier to use and it has fewer limitations. If you look at the dollars, bear in mind that they are subject to the influence of weekend prices by retailers, by special factory pack, that is a "cents off" deal of various kinds, by price changes at the factory level, which are subsequently reflected in changes in price at the consumer level, so that

(Tr. p. 6281)

the dollar basis would require supplemental information in order to have proper reading.

Mr. Royall: Your Honor, may I say one thing on this, not as to this question, but because Mr. Adair quoted what had been said before. We want to make it clear, we are not in any way attacking the accuracy of these figures as to the thing they purport to say. And this question is not directed to the competency of the figures either on a quantity or a dollar basis. I think your Honor clearly understands that.

We have never made that attack and we are not in any way varying from the stipulation.

By Mr. Pride:

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Q. Let me show you, Mr. Nickelson, what has been marked Respondent's Exhibit 134 for identification. Let me ask you if that is a tabulation and summary prepared by you? A. It is.

(Tr. p. 6282)

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Hearing Examiner Haycraft: Did I correctly understand the witness to say this was a tabulation and summary of the data taken from Respondent's Exhibit 133?

The Witness: It is taken from the table showing consumer sales on an ounce basis. I can't identify the number, your Honor.

Hearing Examiner Haycraft: Yes. All right.

Mr. Adair: Mr. Examiner, we have no objection, subject to the right to check the accuracy of the figures.

Hearing Examiner Haycraft: All right.

(Tr. p. 6283)

Exhibit 134A-B is received.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 134A-B for identification was received in evidence.)

By Mr. Pride:

Q. Will you describe what you have done in the preparation of this exhibit and what it consists of? A. This exhibit is in two parts, labeled Table A and Table B. Let's describe Table B first.

This table shows the Chlorox share of market by bi-monthly periods from August-September, 1952, through June-July, 1958. In addition to the bi-monthly shares, we have averaged the shares for each year ending with June-July, that is from 1953 through 1956. They are shown just opposite the figures for the bi-monthly shares. Then these average annual shares shown on Table B, are transferred over to the first page, or Table A in the left-hand column.

We then computed the point change in market share from one year to the next, we have added them up, secured the total change, and then provided an average annual change in market share for Chlorox prior to and after the acquisition.

Q. You say on page "A" of this exhibit you have shown the average annual change for each year before and after, is that correct?

(Tr. p. 6284)

A. That is right.

Q. What does that show respecting this? A. Well, it shows the average annual gain for the four years prior to the acquisition was almost one Neilson share point, that is .975 share points——

Q. No. A. .975 share points, whereas in the four years after the acquisition, the average annual gain was .825 share points, or about 8/10ths of a share point. In other words, the gain after the acquisition was slightly smaller than the gain prior to the acquisition.

Q. Well, that—the pre-acquisition gain was, you say, .975, or about one Neilsen point and the post-acquisition gain was .825?

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(Tr. p. 6285)

* * * * *

Q. You have talked here, Mr. Nickelson, you said you summarized these figures on this exhibit, on a 12-month basis. What is the purpose of doing this on a 12-month basis? A. Well, the purpose is to put the data in a form which can be easily understood. The original documents, which were issued, there were many, many of them involving bi-monthly periods all the way from August-September, 1952, through June-July, 1961. We regard the 12-month basis as the best basis to look at figures of this type in appraising market conditions and competitive conditions.

And they can easier be looked at by having a summary of all of the many, many changes which have taken place over this entire interval. It would eliminate, for instance, the seasonal fluctuations or the fluctuations for whatever reason, as they occur from bi-monthly period to bi-monthly period, or from bi-monthly period in one year to the same bi-monthly period in the other.

(Tr. p. 6286)

Q. I see.

Now, are data available, Mr. Nickelson, on a consumer dollar basis, by which a similar summary and tabulation

can be made and in that connection I show you Commission Exhibit 721 and ask you if that contains such data? A. Yes, it does.

Q. Have you, at our request, prepared similar summaries on the basis of the data contained in that exhibit, Exhibit 721, Commission's Exhibit 721? A. Yes, I have.

(The document referred to was marked Respondent's Exhibit 135A-B for identification.)

By Mr. Pride:

Q. I show you a tabulation which has been marked Respondent's Exhibit 135A-B for identification and ask you if that has been prepared by you. A. It has.

Q. Will you describe what you did in the preparation of that exhibit and what it shows? A. Well, this exhibit was prepared in a manner similar to the one we just examined.

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(Tr. p. 6287)

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For the four years prior to the acquisition, and for the four years after the acquisition. We then computed the average annual change per year for the four years prior to the acquisition and for the four years after the acquisition. And this table shows us that the average annual gain for Chlorox, prior to the acquisition, was .775, or a little less than 8/10ths of one Neilsen share point, whereas after the acquisition, it was .875, or about 9/10ths of a Neilsen share point.

And we considered changes of this magnitude not statistically significant. It would be about 1/10th of one percentage point difference and I would make the same remark with respect to the previous exhibit.

* * * * *

Harry Nickelson—Direct

(Tr. p. 6288)

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By Mr. Pride:

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(Tr. p. 6289)

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Turning to the last year shown on that, on page A, Exhibit 134A, what is the difference in the market share of Chlorox in the last year shown on that exhibit, as compared with the preceding year ending August 1, 1960? A. Well, for the year ended August 1, 1961, Chlorox's share on the 32 ounce equivalent unit basis, was 48.6 per cent.

For the year immediately preceding, it was 48.8 per cent, or Chlorox's share declined 2/10th of one Neilsen share point during the latest 12 months on this report.

Q. I see. Now, do you have Exhibit 135 there? A. Yes.

Q. 135 is on the consumer dollar basis, right? A. Yes.

Q. Now, what does page A of that exhibit show as to the gain in the Chlorox market share in the last year shown on that exhibit over the preceding year, which ended August 1, 1960, as indicated here? A. It shows that Chlorox' Share on a consumer dollar basis increased one-tenth of one Neilson share point.

Q. Let me ask you, Mr. Nickelson, in considering data respecting market shares over a number of annual periods such as the data set forth on these two exhibits, would any particular annual period be more indicative of current market conditions than others?

(Tr. p. 6290)

A. Well, yes, the latest year would be more indicative of current conditions.

Q. I see. Incidentally, Mr. Nickelson, I think you testified that the consumer sales reported by Neilsen in any particular bi-monthly period might be affected by a number of influences, seasonal, temporary fluctuations and so forth.

Is that correct? A. That is right.

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(Tr. p. 6291)

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Q. Turning here to some pages on Commission Exhibit 718, which was introduced at the last hearing, which is a list of—Commission Exhibit 718A-F, I should say—which is a list of certain Chlorox promotions, that exhibit, Mr. Nickelson, is in camera, so I cannot show it to you. But I simply state that it does show the dates on which merchandise involved in these promotions was first shipped from a Chlorox plant.

Now, let me ask you: Can you tell me, could you tell from such shipping dates, when the merchandise so shipped would reach the shelves of the grocery stores and be available to consumers.

Mr. Adair: I object, Mr. Examiner.

(Tr. p. 6292)

Hearing Examiner Haycraft: This is a proper question. Objection overruled. He is asking him as a statistician whether he can tell.

Mr. Adair: He says he is not a statistician and—he is just a vice president of Neilsen.

The Witness: Executive vice president.

Hearing Examiner Haycraft: Go ahead, you may answer the question. How long would it take these goods to get on to the shelves of the store?

The Witness: I don't know. As a matter of fact, it takes varying times, depending upon the store, the location, and many, many other factors. After all, it takes time from the shipping date to reach the wholesale channels of distribution or to chain warehouses, it takes more time to get it to retail stores, furthermore, the shipping dates are not all the same, so I can't tell what date the merchandise would have been available for sale on the shelves. It just takes time and the time varies, store by store.

By Mr. Pride:

Q. I see.

Now, for example, I note here that this Exhibit 718C shows that there was a, what is listed as a free-sponge pack promotion that was first shipped from Chlorox plant on July 11, 1960?

(Tr. p. 6293)

A. Pardon me, what was that date?

Q. July 11, 1960. I am just using an example here. Let me ask you: How much of the movement, could you tell us how much of the movement of that merchandise from the grocery stores would be reflected in the Neilsen reports for June-July, 1960.

* * * * *

The Witness: Well, very little, if any, merchandise shipped on July 11, would be reflected in a June-July report.

Hearing Examiner Haycraft: As a matter of fact,

(Tr. p. 6294)

wasn't that shipped, in your experience, for sale in the fall, early fall, late summer promotions?

The Witness: I wouldn't want to testify as to when this was intended for. But I do know when our audit dates were taken, your Honor, and by the time this merchandise could have reached the store, our ending audits for this period would have been over for the most part. And even for those few stores which would have had it available for sale, they would have been selling this new merchandise only a day or two or a few days out of their total of a 60-day cycle, under which these audits are being made. So it is apparent, in view of my knowledge of the ending audit date, that very little of it could have been reflected under any set of circumstances.

Hearing Examiner Haycraft: In that period?

The Witness: Well, assuming the beginning shipment date of July 11, and obviously all of this merchandise was not shipped on the first date.

Hearing Examiner Haycraft: How long after that date would you say the sales, the audit would reflect the merchandise shipped under these promotions?

The Witness: Your Honor, it would be a varying thing, dependent upon when the stores received it. Some of these stores would not receive it until several weeks afterwards and it would take some while for the first store to get

(Tr. p. 6295)

it. The balance of them would be getting it over a duration of time, and even there it takes them a differing length of time in order to move this merchandise.

Hearing Examiner Haycraft: Would you say the next four months should reflect it, August-September and October-November?

The Witness: I would say it would reflect practically all of it, yes, the bulk of it. Yes, your Honor.

* * * * *

Hearing Examiner Haycraft: That is all right. We will now receive 135 in evidence.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 135A-B for identification, was received in evidence.)

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(Tr. p. 6299)

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Mr. Royall:

* * * * *

We are seeking to establish that the geographical territories of Neilson are in no sense market areas for

(Tr. p. 6300)

liquid bleach. They do not correspond with them in any way. They do not include the competitive areas. There is no instance where they do.

Hearing Examiner Haycraft: I disagree with you on that. And that is the reason I made the finding that I did and apparently the reason the Commission has adopted the same theory, and I do not believe it is up to me to take any further testimony on that or to allow you to change that at this time.

It is not a part of the mandate. For instance, to give an illustration where I think you are entirely wrong, you have a metropolitan Chicago. That certainly is a competitive area. You have metropolitan New York. You have other areas which have large consuming centers in them and where your firm is competing every day with other firms.

Now I don't care, it may not be the type of a market area that you or I would like to have, but it is the only evidence that there is in the record that gives us any idea as to what the competitive situation is in the market areas.

Mr. Royall: Your Honor, let me answer that this way: If you had permitted us to go ahead, we would have said that in the two metropolitan areas that there is pretty much a coincidence, but even there not a complete one.

In the other areas, you find a different situation. In many areas, for example, it appears that the

(Tr. p. 6301)

competitive area, that is where the bleach companies are competing, is only a small segment, or sometimes a medium segment, of a Neilson area. But certainly not——

Hearing Examiner Haycraft: Geographically, perhaps, but volume-wise, no.

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(Tr. p. 6307)

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By Mr. Pride:

Q. Now have you, at our request, compared and summarized this market share information which is taken from Respondent's Exhibit 133, and in that connection I show you what has been marked here as Respondent's Exhibit 136-A to R.

(The document referred to was marked Respondent's Exhibit 136-A-R for identification.)

Hearing Examiner Haycraft: And that is by Neilson

(Tr. p. 6308)

territories, is that correct?

Mr. Pride: That is right, your Honor, and I again emphasize that we are putting this into cover these areas which we believe are not proper, are not appropriate.

Hearing Examiner Haycraft: Of course I will make this ruling, that you are not waiving any of your objections in preparing these exhibits.

Mr. Pride: Thank you, sir.

By Mr. Pride:

Q. Have these tabulations, Mr. Nickelson, that appear on Exhibit 136-A to R, been prepared by you? A. Yes, they have.

Q. I wonder if you would describe the exhibit and how it was prepared. A. Well, this exhibit contains two summary tables for each of the nine Neilson territories and each of the two tables are listed—the first two tables are listed as "A and B." And let us describe the detail shown on these tables for the specific territory as an example for all of the rest.

Again, these have been prepared in a manner similar to the one which was used in connection with the national summary tables.

On the second page of the exhibit, for each territory, we have shown the bi-monthly share of market for Chlorox,

(Tr. p. 6309)

on a 32-ounce equivalent basis, for each bi-monthly period from August-September, 1952, through June-July, 1961.

And again we have averaged the bi-monthly shares for each year ending June-July, and those are shown on the right of the first column of figures.

Again we transferred those average annual shares to the left hand column on the first page of the exhibit, and we have then computed changes in share from one year to

the next, in terms of Neilson points, one place past the decimal point, and finally we have provided an average annual change in share for Chlorox for the four years prior to the acquisition, and for the four years after the acquisition.

Q. I see. And you have done that for each one of these nine standard Neilson territories, is that right? A. Yes, I have.

Mr. Pride: I offer this exhibit in evidence.

Mr. Adair: No objection, subject to the right to check.

Hearing Examiner Haycraft: All right. It is received.

(Respondent's Exhibit 136-A-R was received in evidence.)

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(Tr. p. 6311)

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Q. I show you these tabulations which have been marked Respondent's Exhibit 137 for identification. Have you prepared the tabulations and summaries on that exhibit? A. Yes.

Mr. Pride: I offer it in evidence.

Mr. Adair: No objection.

* * * * *

Hearing Examiner Haycraft: It may be received.

(The document referred to, heretofore marked Respondent's Exhibit 137 for identification, was received in evidence.)

By Mr. Pride:

Q. Will you describe this exhibit 137, Mr. Nickelson? A. Yes, sir. This exhibit contains a table showing consumer sales of all liquid household bleaches other than

(Tr. p. 6312)

Chlorox. Figures are shown for the five years prior to the acquisition, and for the four years following the acquisition, in terms of both 32 ounce equivalent units, and consumer dollars. And these figures can all be checked, Mr. Adair, from previous exhibits. They are set up on the basis of annual totals, for years ending August 1, for 1953 through 1961.

As an example, the figure for household bleach sales other than Chlorox for the year ended August 1, 1957, amounted to 319,734,000 32-ounce equivalent units.

And for the latest year under observation, or the year ended August 1, 1961, sales of all bleaches other than Chlorox, amounted to 365,354,000 equivalent quart units.

In other words, an increase of about 45 million units. Likewise on a dollar basis, as an example, the sales for bleaches other than Chlorox for the year immediately prior to the acquisition, amounted to $49,478,000, and that again is consumer dollars, at prices which consumers paid for their purchases of liquid bleach, and for the last year under observation, sales for products other than Chlorox amounted to $59,254,000, or again from pre-acquisition level to the final year of approximately $10 million.

Incidentally, there were gains of 32-ounce equivalent basis for every year from 1958 through 1961 and on a consumer dollar basis, there were gains for competition to Chlorox during every year except for the year ended August 1, 1960,

(Tr. p. 6313)

when there was a very narrow turn-down.

Q. Let me just ask you a couple more questions, Mr. Nickelson.

I direct your attention to the last line showing the sales of competitive bleaches, the year ending August 1, 1961 and I ask you in terms of 32-ounce equivalents, how much was the increase in the sales of these competitive bleaches for that year over the preceding year ending August 1, 1960.

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(Tr. p. 6314)

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The Witness: It was between 19 million ounces and twenty million ounces. I have not made that——

By Mr. Pride:

Q. You mean 19 million 32-ounce equivalent units? A. Equivalent units, that is right.

Q. And looking at the same bottom line, would you tell us what the increase in dollars, consumer dollar sales, on this consumer dollar basis of competitive bleaches, what the increase was for the year ending August 1, 1961, over the preceding year, ending August 1, 1960? A. It was over $3 million.

Q. Without going into any more specifics, Mr. Nickelson, and to terminate this without any further specific reference to this exhibit, let me ask you, in summary, is it fair to say that the data which you have summarized on this exhibit, Respondent's Exhibit 137, shows that these competitors of Chlorox, in every year since it was acquired by Procter, have sold more liquid bleach for more money than they did in any

(Tr. p. 6315)

year prior to the acquisition and that in the year ending August 1, 1961, they were selling more bleach for more money than at any time in the history of the bleach industry? A. That is a correct statement.

Mr. Adair: I think the witness would like to correct his statement. He said that is a correct statement. There was one flaw in it. The year August 1, 1960, was a decline.

The Witness: I pointed that out.

Mr. Adair: But his questions did not assume it.

The Witness: He was referring to the latest year.

Mr. Pride: I said in the latest year they were selling more bleach for more money than in any year in the history of the bleach industry. That is a correct statement. I think I have no further questions, your Honor, and I will conclude my examination.

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(Tr. p. 6316)

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CROSS EXAMINATION

By Mr. Adair:

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Q. Is Procter and Gamble your account? A. No, Mr. Adair.

Q. Whose account is it?

(Tr. p. 6317)

A. It is handled under my supervision. I am an executive vice president, and I have seven vice presidents under me, who do handle accounts. I have a man who handles the Procter and Gamble work, under my direct supervision, but I did handle it myself from 1954 to about 1958, and I continued to go to the Procter and Gamble Company, either at their request or at the request of some of our men, so I keep my fingers in the account work at Procter and Gamble Company.

Q. In other words, the vice president that has the immediate responsibility for Procter and Gamble account reports to you? A. Yes, he does.

Q. And you have this account for all of its products, all of Procter's products? A. Yes.

Q. How many executive vice presidents does Neilson have? A. Six.

Q. Is Procter and Gamble the largest account you have supervision of? A. Yes.

Q. Are there any larger accounts that Neilson has, other than Procter and Gamble, and if so, name them. A. There were not—the answer is No.

Q. It is the largest account Neilson has? A. Procter and Gamble is the largest account Neilson has.

(Tr. p. 6318)

Q. Will you tell us what Procter and Gamble subscribes for from Neilson? A. You mean the product classes?

Q. Yes, sir, volumes, the Neilson indexes you sell to them. A. I am not sure I can recite from memory all of the product classes that are involved. But I believe it would be a correct statement to say that they buy Neilson's service on all product fields in which they are interested. Now they have many——

Q. What do you mean interested? A. In which they have an entry, in which they have a product. Now as far as the number of products are concerned, I can't testify as to the number that are involved.

* * * * *

Q. How many subscribers do you have for Neilson's service for liquid bleach, Mr. Nickelson? A. Up until about two months ago we had two. We now have three.

Q. Who are they? A. They are Chlorox, Purex, and Climaline.

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(Tr. p. 6319)

Mr. Royall: Let me ask this: Is this about some other company?

Hearing Examiner Haycraft: Yes, Climaline.

Mr. Royall: We object to that, your Honor.

I don't know what that has to do with it. I assume they have some other purpose, but certainly we cannot go into matters that did not come up. I don't know who Climaline is.

Hearing Examiner Haycraft: I will stop the testimony. Tell us where they are located and that will be all.

The Witness: I am not even sure. I think it is Ohio.

By Mr. Adair:

Q. Do they buy it on a regional basis? A. Yes, sir.

Hearing Examiner Haycraft: No further testimony on that, please.

Mr. Adair: All right, sir.

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(Tr. p. 6326)

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Lawrence Stratton

was called as a witness for the Commission, and having been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

By Mr. Adair:

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(Tr. p. 6335)

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Hearing Examiner Haycraft: Do I understand you correctly, are you criticizing the fact that they took five years in one table and four in the other?

The Witness: No. It seems to me the figure here, on 135-A, which is 0.3, at the top of the lower section of the righthand column, results from a comparison between the last year of the Chlorox operation as an

(Tr. p. 6336)

independent, and the first year of the P and G operation of Chlorox.

If that is what they had in mind, that is all right. But it seems to me it introduces a link between the two operations here.

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(Tr. p. 6337)

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Hearing Examiner Haycraft: Am I to assume then both sides have closed?

(Tr. p. 6338)

Mr. Royall: Yes, sir; we have closed.

Hearing Examiner Haycraft: Mr. Adair?

Mr. Adair: Yes, sir.

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(Tr. p. 6345)

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Hearing Examiner Haycraft:

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With that understanding, then, we will adjourn this proceeding at this time with the understanding that counsel on both sides will have until January 15th to submit any proposed findings they wish to submit; that each side thereafter will be allowed until the 1st of February to answer

those proposed findings that have been submitted on the 15th of January.

So I will close the taking of testimony at this

(Tr. p. 6346)

time, with that understanding, and after that is done, I will close the record.

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1555 In the United States Court of Appeals for the Sixth Circuit

Before: WEICK, Chief Judge, PHILLIPS, Circuit Judge, and GREEN, District Judge

Minute entry of argument and submission—October 21, 1965

This cause is argued by Frederick W. R. Pride and Kenneth C. Reyall for Petitioner and by Gerald Harwood for respondent and is submitted to the Court.

1556 [File endorsement omitted]

In the United States Court of Appeals for the Sixth Circuit

No. 15769

THE PROCTER & GAMBLE COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL TRADE COMMISSION

Opinion Decided March 18, 1966

Before WEICK, Chief Judge, PHILLIPS, Circuit Judge, and GREEN,* District Judge

WEICK, Chief Judge. This is a proceeding to review an order of the Federal Trade Commission requiring The Procter & Gamble Company to divest assets of Clorox Chemical Company alleged to have been acquired by it in violation of Section 7 of the Clayton Act. 15 U.S.C. § 18.

The complaint filed by the Federal Trade Commission was served on October 7, 1957. It alleged that Procter is the lead-

* Honorable Ben C. Green, Judge, United States District Court for the Northern District of Ohio, sitting by designation.

ing producer in the United States of soap and detergent products, which it sells under brand names, and a major producer of other consumer products sold under brand names. The complaint further alleged that on August 1, 1957 Procter acquired Clorox Chemical Company, which was the nation's largest producer of household liquid bleach, and that Clorox sold its product nationally under the trade name of "Clorox".

1557 The complaint further alleged that Procter's acquisition of Clorox may substantially lessen competition or tend to create a monopoly in the sale of household liquid bleaches, in violation of Section 7 of the Clayton Act.

Procter filed an answer admitting its acquisition of the assets of Clorox, but denying the alleged probable anticompetitive effects of the acquisition and denying that it violated Section 7 of the Clayton Act.

Following hearings before a hearing examiner over a period of about fourteen months, the examiner issued his initial decision on June 17, 1960, finding that the acquisition violated Section 7 of the Clayton Act and ordered divestiture.

Appeals were taken to the Commission and on June 15, 1961, in a per curiam opinion, the Commission set aside the initial decision of the examiner because the record as presently constituted did not provide an adequate basis for determining the legality of the acquisition. It recognized that under such circumstance it might dismiss the complaint, but concluded that the public interest would be better served by remanding the case for the taking of additional evidence. It stated that the remand would afford a more complete post acquisition picture and allow "the Commission an informed hindsight upon which it can act rather than placing too strong a reliance upon treacherous conjecture."

The hearing examiner was directed to receive evidence relating to the competitive situation as it presently exists in the liquid bleach industry and was instructed that the evidence should relate to events occurring since November, 1958, and should include market share data in geographical regions, as well as information directed to more clearly delineating the production and merchandising facilities and techniques utilized by Clorox under the control of Procter.

Prior to the hearing on the remand Procter filed a complaint in the United States District Court for the District of Columbia, to enjoin the Commission from proceeding with the remand. Its motion for a temporary restraining order was denied on the Commission's representation that the remand pro-
1558 ceeding would take no more than two days. The action was later dismissed. The remand hearing was held and completed in two days. The hearing examiner rendered his second initial decision on February 28, 1962, which, like his first initial decision, found against Procter and ordered divestiture.

On the second appeal to the Commission, it ordered reargument on all contested issues of fact and law presented by the entire record and not merely by the record on the remand. The Commission in a 74 page opinion decided against Procter, adopting substantially the hearing examiner's findings and recommendations, except that it permitted Procter to divest the acquired assets by means of a spin-off.

Procter presents two questions here, namely, (1) whether the Commission's conduct of the proceeding and its reliance on matters de hors the record violated the Clayton and Administrative Procedure Acts and denied Procter due process of law; and (2) whether there was substantial evidence that the acquisition violated Section 7 of the Clayton Act. We will discuss these questions in the order presented.

THE COMMISSION'S CONDUCT OF THE PROCEEDING

As has been noted, the Commission rendered two decisions in this case. In the interim between the decisions the personnel of the Commission changed, so that only one Commissioner participated in both decisions.

Procter argues that since the Commission found in its first decision that the record did not form an adequate basis for determining the legality of the acquisition, it should have dismissed the complaint instead of remanding the case to the hearing examiner for further hearings.

Although it is true that the Commission could have dismissed the complaint, in our opinion it was not required to do so. It had the power, in its discretion, to order a remand and to permit the introduction of additional evidence. The Commission's first decision was not a final decision. The case

was still pending before the Commission. At best, its first decision was interlocutory in nature and was subject
1559 to reconsideration and change. *Kirk* v. *Olson*, 245 U.S. 225 (1917); *Cia Mexicana DeGas* v. *F.T.C.*, 167 F. 2d 804 (5th Cir., 1964); 2 Am. Jur. 2d, Administrative Law, § 522.

Procter relies on *Texaco, Inc.* v. *F.T.C.*, 336 F. 2d 754 (D.C. Cir., 1964), where the Commission was criticized on this and on another ground. The Supreme Court, however, vacated the order of the Court of Appeals directing that the complaint be dismissed and remanded the case for further proceedings. In any event, it does not appear to us that the Court of Appeals set aside the order because of the Commission's conduct alone. 381 U.S. 739 (1965). The Supreme Court's treatment of Texaco does not support Procter.

THE COMMISSION'S ALLEGED RELIANCE ON MATTERS DE HORS THE RECORD

Procter asserts that the Commission's decision was based upon economic theories drawn from extra-record writings and was therefore violative of due process. It states that the decision was premised and critically based upon 85 citations of 43 extra-record writings which purport to deal with economic, political and social concepts.

These cited writings were general in nature. None of them dealt with the facts in the present case. At no place in its opinion did the Commission regard the citations as evidence. There was no citation of any economic writings by the hearing examiner in his second initial decision, which adopted findings of fact and comprises about 88 pages of the record. The hearing examiner's first initial decision cites no such authority. The Commission apparently cited these writings to demonstrate that its decision comported with economic authority. The Supreme Court has cited and relied on economic writings in its consideration of Section 7 cases. *F.T.C.* v. *Consolidated Foods*, 380 U.S. 592 (1965); *United States* v. *Penn-Olin Chem. Co.*, 378 U.S. 158 (1964); *United States* v. *Philadelphia Nat'l Bank*, 374 U.S. 321 (1963); *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962). See also *Ekco Products Co.* v.
1560 *F.T.C.*, 347 F. 2d 745 (7th Cir., 1965); *Crown Zellerbach Corp.* v. *F.T.C.*, 296 F. 2d 800 (9th Cir., 1961).

We find no error in this respect.

WAS THERE SUBSTANTIAL EVIDENCE THAT THE ACQUISITION OF CLOROX BY PROCTER WAS REASONABLY LIKELY TO RESULT IN A SUBSTANTIAL LESSENING OF COMPETITION IN VIOLATION OF SECTION 7 OF THE CLAYTON ACT?

It is difficult for us to harmonize the two decisions of the Commission in this case.

The decision of the first Commission set aside the first initial decision of the hearing examiner because the record as then constituted did not provide an adequate basis for determination of the legality of the acquisition. This is another way of saying that the evidence was insufficient to support a finding of illegality. The remand was for the sole purpose of taking post-acquisition evidence from which the Commission could rely on "informed hindsight" rather than "upon treacherous conjecture." The only evidence taken on the remand related to post-acquisition conditions.

The second Commission, contrary to the ruling of the first Commission, was of the view that the post-acquisition evidence was of little value and was admissible only in an unusual case (not the present case). It did discuss a portion of the post-acquisition evidence and stated that if it was considered it might furnish support for the findings which it made on the basis of other factors. It also mentioned that none of the phenomena (post-acquisition evidence) proved that the merger was unlawful. It stated that there had been no "dramatic" change in market structure or behavior in the years since the merger and that there was no basis for according the post-acquisition evidence particular weight since it "found its way, needlessly, into the record." The post-acquisition evidence will be discussed more in detail later.

The second Commission's decision was based entirely on the record submitted to the first Commission, which that body had ruled to be insufficient to support a finding of illegality.

1561 We must determine whether the findings contained in the opinion of the second Commission which conflict with those of the first Commission, are supported by substantial evidence.

Procter is an Ohio corporation. At the time of the acquisition it was the nation's largest domestic manufacturer of soaps, detergents, and cleansers. It also manufactured and sold some food products, paper products, shampoos, dentifrices, and home

permanents. It had assets in excess of one-half billion dollars, and annual sales of $1.15 billion. It was an old, well managed and highly successful company, having some 56,000 shareholders.

Clorox Chemical Co. on the other hand was a relatively small company as compared with Procter. It was organized in 1928, and manufactured, distributed and sold a single product, "Clorox," a household liquid bleach which was used as a whitener as well as a disinfectant. Clorox was the largest producer of such bleach in the country.

During the period of five years prior to the merger, Clorox had a steady and continuous growth in sales, profits, and net worth. It had total assets (depreciated book value) of over $12,000,000, of which $4,000,000 was liquid, and had an earned surplus of over $7,000,000. It had annual sales of slightly less than $40,000,000, which constituted 48.8% of the national sales of liquid household bleach. It had thirteen plants located throughout the country, and was the only producer of bleach that distributed on a national scale. It employed no salesmen but marketed its product solely through brokers or distributors.

The merger negotiations were initiated by shareholders of Clorox, and after study for almost two years by Procter, they ripened into a merger, whereby Procter exchanged 639,578 shares of its common stock, worth about $30.3 million, for the assets of Clorox, which were transferred to a Procter subsidiary.

Household liquid bleach is manufactured by a relatively simple process. Chlorine is introduced into a caustic soda solution, the resulting chemical reaction being one which forms sodium hypochlorite. The bleach consists of
1562 5¼% hypochlorite and 94¾% water. The bleach retails for about fifteen to nineteen cents per quart. It is a low priced, high turnover item, sold mainly to housewives, in grocery stores and supermarkets. Because of the weight of both the product and its container, as reflected in the high cost of shipping, it has been found feasible to market the bleach mostly in areas not more than three hundred miles from the location of its manufacture.

Procter had never engaged in the manufacture or distribution of household liquid bleach prior to the merger and there is no evidence that it ever planned to do so on its own. It was not a competitor, supplier or customer of Clorox.

There was no dispute between the parties over the line of commerce or the section of the country. The line of commerce was household liquid bleach and the section of the country was the nation and a series of regional markets.

The following table shows the market shares prior to the merger of the six leading producers of household liquid bleach, and about two hundred small producers appearing under the title of "all other brands." The "All other brands" also include chain stores and supermarkets who sell their own private brands, and account for about 20% of the market.

"Market Shares of Household Liquid Bleach Manufacturers

[Consumer Dollar Basis]

Brand	*Percentage of Total U.S. Sales*
Clorox	48.8
Purex	15.7
Roman Cleanser	5.9
Fleecy White	4.0
Hilex	3.3
Linco	2.1
Total	79.8
All Other Brands	20.2"

1563 The two hundred producers were mostly small concerns or individuals, some of whom were characterized as small "garage" or "down cellar" bleach producers. Only eight of such producers had assets in excess of $1,000,000, and very few had assets of more than $75,000.

The market shares of the six leading producers on a consumer dollar basis for the nine principal territories are shown on the table appearing at the end of this opinion as Appendix "A".

Although there was evidence that all producers use the same formula in the manufacture of liquid household bleach, Clorox attributed its success to its maintaining a high degree of quality control in its production process. The fact that prior to the merger its sales accounted for nearly fifty per cent of the market, would seem to indicate its product's wide acceptance and preference by housewives. The Commission, on the other hand, attributed the success of Clorox to extensive advertising. Clorox did spend about ten per cent of its sales in advertising. But even though the advertising was extensive, the product had to be good in order for it to obtain repeat-purchases by the

housewife. This is demonstrated by the fact that large chains like A&P and Safeway Stores carry Clorox on their shelves even though they market their own private brands of bleach.

The Commission was of the opinion that the household liquid bleach market was highly concentrated, with barriers making it virtually impossible to be penetrated nationally. It probably would be difficult to penetrate this market on a national scale without the expenditure of a large sum of money. There is no evidence that anyone has ever tried it. Clorox was the only producer in that field. The fact that the bleach is a low cost, high turnover item, with accompanying small profits, requiring many factories in strategic locations, would probably act as a deterrent. We would doubt that a small company like Clorox, with assets of only $12,000,000, would deter large companies like Lever Brothers and Colgate-Palmolive Peet Co., (Procter's large competitors) from entering the field on
1564 a national basis if they concluded that the profits were sufficiently attractive to justify the expenditure required. We would think that any concern desiring to enter the household liquid bleach market would probably try it on a regional basis.

The fact that in addition to the six named producers sharing eighty per cent of the market, there were two hundred smaller producers, both prior and subsequent to the merger, would not seem to indicate anything unhealthy about the market conditions. And the post-merger evidence was to the effect that the other producers subsequent to the merger were selling more bleach for more money than ever before.

It was the position of Procter that it merely supplanted Clorox in the market and that the merger did not increase the market share of Clorox because Procter was not in that market.

The Commission points out that with Procter's huge finances, its know-how in the manufacturing and marketing of its own products, its eighteen hundred salesmen, and its ability to obtain discounts in advertising, it is in a much better position than Clorox to compete with all the bleach competitors, and that Procter could sell for lower prices (even below cost) and this would probably lessen competition.

But Clorox, and not Procter, had the know-how in the household liquid bleach business as evidenced by its success

in starting from scratch and building a $12,000,000 corporation with sales of nearly $40,000,000 annually and obtaining over forty-eight per cent of the market. The finances of Clorox, although not comparable with Procter's, were entirely adequate for its purpose and enabled it to continue its growth and to maintain and increase its share in the market. There has been no significant change in Clorox's market share in the four years subsequent to the merger.

Procter has eighteen hundred salesmen. Since the merger Procter has continued with Clorox distributors and has not used its own salesmen. Assuming that it may desire at
1565 some time to change over to salesmen, it is not probable that it could do so without substantially increasing the size of its sales force, which would involve additional expense. It is of course possible that some economies could be effected if a changeover is made, but that is no reason to condemn a merger otherwise lawful.

Clorox spent about ten per cent of its sales in advertising. Procter, in its soap and cleansing products business, is one of the nation's largest advertisers, spending about $70,000,000 in the year of the merger, and an additional $47,000,000 for promotion. The Commission points out that Procter could obtain larger discounts than Clorox in television network, newspaper and magazine advertising, and could adapt the advertising on a national or local basis as the need arises. Clorox used principally spot announcements rather than network advertising, which were effective and very adequate for its own purpose. The cost of network advertising would seem to depend on the type of talent utilized on the program. TV stations, magazines and newspapers are not required to give discounts for quantity advertising and presumably could discontinue them at any time. Doubtless Procter could advertise more extensively than Clorox, but there is such a thing as saturating the market. We find it difficult to base a finding of illegality on discounts in advertising. Here again, in our judgment the fact that a merger may result in some economies is no reason to condemn it.[1]

[1] We cannot assume that Procter would divert the large sums which it found necessary to expend for advertising and promotion to maintain its competitive position in the soap and cleanser field to wipe out its competitors in the household bleach market.

The commission urges that Procter, with its complete line of household products, is in a much better position than Clorox to obtain desirable shelf space in grocery stores, for the display of all of its products, including bleach. The evidence is clear that Clorox, prior to the merger; with distributors and not a sales force of its own, obtained very adequate shelf space,
1566 even in chain stores and supermarkets which displayed their own private brands Where a product like Clorox has great consumer demand, a grocer is very likely to display it in order to satisfy his customers. We find no merit in this claim.

The Commission directed attention to Procter's success in marketing new products. In 1957 Procter introduced a new abrasive cleanser called "Comet". At the time Procter entered the field, "Ajax", manufactured by Colgate-Palmolive, sold about fifty-six per cent of the total national sales of abrasive cleansers. Other leading brands were "Bab-O", which had twenty-four per cent of the total national sales, and "Blue Dutch", which had ten per cent. Over a period of twenty-two months Procter spent $7.2 million in advertising and attained 36.5% of the national market; Ajax dropped to 36.9%, and all other brands, including Bab-O and Blue Dutch, fell from 44% to 26.6%.

If anything, this tends to show that Procter could have entered the liquid household bleach market on its own if it had desired to do so, and without having to defend the action of the Federal Trade Commission which followed its merger with Clorox. There is no evidence that it had any such intention. The share of the market it could have captured, whether it could have permanently retained it, and the cost, are matters of conjecture.

The Commission further points to an Erie County, Pennsylvania incident which took place after the merger, as evidence of the effectiveness of Procter's intensive advertising and promotion practices. Prior to the Erie incident, Clorox had about 52% of the market in that area, with "101", a brand sold by Gardner Mfg. Co., about 29% of that market. Purex, a competitor of Clorox, was not in that market. Purex decided to enter the Erie market. It introduced a new bottle and an alleged improvement in its bleach. It engaged in an intensive advertising and promotional campaign, offering re-

ductions of ten and fifteen cents on any size bottle and offering twenty and twenty-five cents reductions on half-gallon
1567 and gallon purchases. In about two months Purex captured 33% of the Erie market. Clorox dropped from 52% to 35%, and "101" brand dropped to 17%. Procter retaliated by offering its bleach at three cents off per quart, five cents off per half-gallon, and seven cents off one-gallon sizes. Subsequently it offered a one dollar value ironing board cover for fifty cents with each purchase of Clorox. Procter supplemented the regular newspaper advertising of Clorox with extensive TV spots. The market for Clorox was not only regained but its sales increased by 1% and Purex's share fell to 7%.

It was undisputed that Purex started this "price war". We think Procter was justified in retaliating to defend itself, to meet competition, and to prevent its business from being taken away. The incident revealed the power of Purex, which retreated after Procter adopted protective measures. It should be noted, however, that without the merger Clorox could, and in all probability would have resorted to the same measures and in all likelihood it would have obtained the same results. It had the know-how and the necessary finances to do so.

There was no evidence that Procter at any time in the past engaged in predatory practices, or that it intended to do so in the future. Ample authority exists for the Commission to deal with any such practices when the occasion arises. 15 U.S.C. § 13, Discrimination in prices—Underselling in particular localities; 15 U.S.C. § 14, Tying Agreements; 15 U.S.C. § 45, Unfair methods of competition.

The Commission urges that the merger eliminated a potential competitor, namely Procter. This issue was never raised until after all the evidence was in and the appeal was taken to the second Commission. There was no evidence tending to prove that Procter ever intended to enter this field on its own. Its promotion department, in considering whether to enter into the proposed merger with Clorox recommended against Procter going into the bleach business on its own. The Commission's finding, therefore, is based on mere possibility and conjecture.

1568 The merger in the present case was neither vertical nor horizontal, but conglomerate. The second Commission has characterized it as product extension. Since the

1950 amendments to Section 7, conglomerate as well as vertical and horizontal mergers come within the proscription of the Act. *United States* v. *Philadelphia Nat'l Bank*, 374 U.S. 321 (1963); *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962).

In a Section 7 case it is necessary to determine whether there is a reasonable probability that the merger may result in a substantial lessening of competition.

Amended Section 7 was intended to arrest anticompetitive tendencies in their incipiency. *United States* v. *Continental Can Co.*, 378 U.S. 441 (1964); *United States* v. *Philadelphia Nat'l Bank, supra; Brown Shoe Co.* v. *United States, supra.* A mere possibility is not enough, *United States* v. *E. I. Du-Pont deNemours & Co.*, 353 U.S. 586 (1957); nor is certainty required, *United States* v. *Penn-Olin Chem. Co.*, 378 U.S. 158 (1964).

Prior to the merger Clorox was a well managed, adequately financed company, steadily increasing its business and having nearly fifty per cent of the market. It had no competition on the national scale. Competition existed only in regional areas. Procter merely stepped into the shoes of Clorox. Whether or not it can do better than Clorox in the liquid household bleach field, remains to be seen.

The Nielsen tables showing market share and point change on a unit and dollar basis, for a period of five years prior to the merger and four years after, do not reveal any significant change in the rate of growth of Clorox. Appendix "B".

Both tables showed a decline for Clorox in the year 1961. On the other hand, the total sales of liquid household bleach, other than Clorox, substantially increased both before and after the merger. Appendix "C".

It is obvious therefore that subsequent to the merger, competitors of Clorox sold substantially more bleach for more money than prior thereto. This evidence certainly does
1569 not prove anti-competitive effects of the merger. The Commission gave it no consideration.

We think the Commission was in error in ruling that post-merger evidence was admissible only in unusual cases and that it crept into the record needlessly in the present case, and in giving it no weight. This evidence was in the record, not needlessly, but because of the order of the first Commission.

The Commission relied on *F.T.C.* v. *Consolidated Foods*, 380 U.S. 592 (1965). The Supreme Court in that case did not hold that post-acquisition evidence was irrelevant and inadmissible. On the contrary it cited *United States* v. *E. I. DuPont deNemours & Co., supra*, as authority for considering such evidence. See also *Ekco Products Co.* v. *F.T.C.*, 347 F. 2d 745 (7th Cir. 1965); *Reynolds Metals Co.* v. *F.T.C.*, 309 F. 2d 223, 230 (D.C. Cir. 1962).[2] The Supreme Court said that the post-acquisition evidence should not be given conclusive weight or allowed to override all probabilities. It held that the Court of Appeals in that case attached too much weight to it.

Any relevant evidence must be considered in a Section 7 case involving as it does the drastic remedy of divestiture. The extent to which inquiry may be made into post-merger conditions may well depend on the facts of the case, and where the evidence is obtained it should not be ignored. The weight to be attached to it depends upon all the facts and circumstances of the case.

It is contended that Procter's behavior subsequent to the merger may have been influenced by the pendency of the present proceeding. This is pure conjecture. As before pointed out, Procter was not in the habit of indulging in preda-
1570 tory practices, and if it engages in such practice in the future the Commission has ample power to deal with it.

The Commission and Procter rely on *Ekco Products Co.* v. *F.T.C., supra*, which cited the Commission's decision in the present case. *Ekco* involved two acquisitions, one of which was horizontal, and the other conglomerate. The facts were different in *Ekco* and the Court very carefully limited the decision to the facts of that case.

In considering the question of the substantiality of the evidence, we cannot ignore the two conflicting opinions of the Commission based upon the same evidence. Where an agency overturns findings of fact of a hearing examiner, this fact is considered by a reviewing court. *Universal Camera* v. *N.L.R.B.*, 340 U.S. 474, 496, 497 (1951); *N.L.R.B.* v. *Ohio Calcium Co.*, 133 F. 2d 721 (6th Cir. 1943). Here the second

[2] Reynolds involved a vertical merger where post-merger evidence offered by the Commission showed that five of Arrow's seven competitors had by 1957 dropped from 14% to 47% below 1955 sales. If post-acquisition evidence is admissible to prove anticompetitive effects, it should also be admissible to establish that the merger resulted in no lessening of competition.

Commission rejected the findings of the previous Commission. In our opinion, the same rule applicable to hearing examiners ought to be applied here.

As pointed but by the first Commission, the findings of illegality may not be based upon "treacherous conjecture", possibility, or suspicion. And yet this is exactly what the second Commission indulged in by basing many of its findings and conclusions upon hypotheses which the record shows have never taken place. An illustration of this is the finding that Procter was on the "brink" of entering the market on its own. Household liquid bleach is an old product; Procter is an old company. If Procter were on the brink it is surprising that it never lost its balance and fell in during the many years in which such bleach was on the market. It had never threatened to enter the market. *Cf. United States* v. *Penn-Olin Chem. Co., supra*, at 173.

Other large corporations which were competitors of Procter, such as Lever Bros. and Colgate-Palmolive, had capabilities of entering the field. Monsanto Chemical and Diamond Alkali Co. had engaged in negotiations with Clorox. There are many other large companies in the country which had
1571 similar capabilities of entering into a conglomerate merger. There was no reasonable probability that Procter would have entered the household liquid bleach market but for the merger. *United States* v. *Penn-Olin Chem. Co., supra.*

Clorox desired to sell its assets. Its owners were reaching the age of retirement and wanted to transform their stock into a marketable security of a successful company. A small company could not qualify. Clorox either had to sell to a larger company or not sell at all.

The Commission recognized that complete guidelines for this type of merger have not yet been developed and that the case presented a challenge to it and to the courts "to devise tests more precisely adjusted to the special dangers to a competitive economy posed by the conglomerate merger." We do not believe these tests should involve application of a per se rule.

The Supreme Court has not ruled that bigness is unlawful, or that a large company may not merge with a smaller one in a different market field. Yet the size of Procter and its legitimate, successful operations in related fields pervades the entire opinion of the Commission, and seems to be the motivating

factor which influenced the Commission to rule that the acquisition was illegal.

Here Procter was merely adding another product to its line, which was somewhat akin to the products which it was already handling. They were all household items sold in grocery stores. It could have entered the market on its own, but decided not to do so.

Considering the record as a whole, we are of the opinion that the decision of the second Commission is not supported by substantial evidence. *Universal Camera* v. *N.L.R.B.*, *supra*.

We see no point in remanding this case to the Commission. This protracted litigation, which is going on to its ninth year, should come to a close.

The order of the Commission is set aside and the cause is remanded with instructions to dismiss the complaint.

1572

APPENDIX A

Market Shares of Liquid Bleach Brands as Shown by the Nielsen Food Index for Nine Territories

Section of The Country	Clorox	Purex	Fleecy White	Hilex	Linco	Roman Cleanser	All Others
New England	[9]56.0	[10] —	—	—	—	—	44.0
Metropolitan New York	64.3	—	—	—	—	—	35.7
Middle Atlantic	71.6	—	—	—	—	—	28.4
East Central	42.4	5.0	5.2	0.9	0.7	27.2	18.6
Metropolitan Chicago	28.6	0.1	18.9	0.1	50.3	—	2.0
West Central	34.5	20.6	9.0	25.8	2.1	—	8.0
Southeast	52.6	16.0	5.7	—	—	5.3	20.4
Southwest	48.4	39.6	3.9	—	—	—	8.1
Pacific	39.2	42.4	—	—	—	—	18.4

[9] Percent of total sales of liquid bleach on a consumer dollar basis.
[10] No figure given if the brand listed is not sold in the area.

Source: 154X. The section of the country included in each of the Nielsen territories is shown on page 70 of CX 325 (certified to the Court, but not printed). The accuracy of the Nielsen data was stipulated (820a-21a).

1573

APPENDIX B

TOTAL UNITED STATES

NIELSEN—LIQUID HOUSEHOLD BLEACHES
SUMMARY OF CLOROX SHARE CHANGES

32 oz. Equivalent Unit Basis:

Year Ended:	Share	Point Change
August 1, 1953	41.4	—
August 1, 1954	43.0	+1.6
August 1, 1955	44.0	+1.0
August 1, 1956	44.8	+0.8
August 1, 1957	45.3	+0.5
Total Change		+3.9
Average Annual Change		+0.975
August 1, 1958	45.8	+0.5
August 1, 1959	46.8	+1.0
August 1, 1960	48.8	+2.0
August 1, 1961	48.6	−0.2
Total Change		+3.3
Average Annual Change		+0.825

Dollar Basis at Cost Price to Consumer:

Year Ended:	Share	Point Change
August 1, 1953	45.3	—
August 1, 1954	46.4	+1.1
August 1, 1955	47.1	+0.7
August 1, 1956	47.8	+0.7
August 1, 1957	48.4	+0.6
Total Change		+3.1
Average Annual Change		+0.775
August 1, 1958	48.7	+0.3
August 1, 1959	50.1	+1.4
August 1, 1960	51.8	+1.7
August 1, 1961	51.9	+0.1
Total Change		+3.5
Average Annual Change		+0.875

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APPENDIX C

Total United States

NIELSEN—LIQUID HOUSEHOLD BLEACHES

Sales of all liquid household bleaches—other than Clorox

	32 ounce Equivalent Units	Consumer Dollars
Prior to Acquisition:		
Year Ended:		
August 1, 1953	270, 011, 000	$39, 178, 000
August 1, 1954	273, 046, 000	40, 230, 000
August 1, 1955	290, 092, 000	43, 443, 000
August 1, 1956	308, 797, 000	46, 638, 000
August 1, 1957	319, 734, 000	49, 478, 000
Subsequent to Acquisition:		
Year Ended:		
August 1, 1958	329, 656, 000	$53, 910, 000
August 1, 1959	345, 726, 000	56, 287, 000
August 1, 1960	346, 038, 000	56, 197, 000
August 1, 1961	365, 354, 000	59, 254, 000

1575 [File endorsement omitted]

In the United States Court of Appeals
for the Sixth Circuit

No. 15769

THE PROCTER & GAMBLE COMPANY, PETITIONER

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Before: WEICK, Chief Judge, PHILLIPS, Circuit Judge, and GREEN, District Judge.

Judgment—Filed March 18, 1966

On Petition for Review of an order of the Federal Trade Commission,

This cause came on to be heard on the transcript of the record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the order of the Federal Trade Commission be set aside and the cause remanded with instructions to dismiss the complaint.

No costs awarded. Rule 23(4).

Entered by order of the Court.

CARL W. REUSS,
Clerk.

Costs: None.

1576 [Clerk's Certificate to foregoing transcript omitted in printing]

1577 Supreme Court of the United States

No. ——

October Term, 1965

FEDERAL TRADE COMMISSION, PETITIONER

vs.

THE PROCTER & GAMBLE COMPANY

Order extending time to file petition for writ of certiorari—June 14, 1966

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 15, 1966.

POTTER STEWART,
Associate Justice of the Supreme Court of the United States.

Dated this 14th day of June 1966.

1578 Supreme Court of the United States

October Term, 1966

No. 342

FEDERAL TRADE COMMISSION, PETITIONER

v.

THE PROCTER & GAMBLE COMPANY

Order allowing certiorari—October 17, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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COMMISSION EXHIBITS

Description

NUMBER		PAGE
6	The Procter & Gamble Company Annual Report, 1957	1X
12	Financial Statement of Clorox Chemical Co., 1957	13X
14	Procter & Gamble application for listing on the New York Stock Exchange	17X
17	Procter & Gamble sales manual for toilet goods sales department	20X
18	Procter & Gamble sales manual for case goods sales department	26X
21	Procter & Gamble memorandum on CSM Program	83X
27	Agreement between Clorox Chemical Co. and The Procter & Gamble Company, May 28, 1957	91X
28	Clorox Chemical Co. proxy statement, July 1, 1957	106X
84	Procter & Gamble contest involving Camay and Ivory Snow	115X
111	Procter & Gamble contest involving soap and detergent	117X
153	Procter & Gamble brochure involving Comet	126X
214	Clorox Chemical Co. 1957 Spring Housecleaning promotion	135X
279	Procter & Gamble Wife-Saver Sale	137X
321	Study of brands of washing products used in urban and rural homes, April 22, 1957	143X
323	Memorandum dated February 28, 1957, Link to Snow	147X
324	Memorandum dated October 26, 1956, Snow to Warrington	150X

NUMBER	Description	PAGE
325	Nielsen Food Index, June-July 1957, Tables 4 and 5, Household Bleaches	154X
336	Clorox Advertisement in Erie, Pa., Times, November 25, 1957	156X
* 342	Procter & Gamble domestic advertising and sales promotion—all brands, 1956 and 1957. *In Camera* volume	423X
348	"Moonbeams" for November, 1956	157X
372	Clorox Chemical Co. letter to distributors, July 6, 1956	160X
374	Clorox Chemical Co. letter to distributors, July 20, 1956	164X
* 399	Clorox Chemical Co. letter to distributors, November 1, 1957. *In Camera* volume	424X
* 403	The Clorox Company advertising and promotional expenditures, August 1, 1957-October 31, 1957. *In Camera* volume	420X
413	Clorox Chemical Co. press release, April 22, 1957	167X
418	Clorox Chemical Co. advertisement reprint	169X
420	A G Food Markets advertisement in Twin Falls Idaho Times-News, October 24, 1957	171X
423	Clorox Chemical Co. advertisement reprint	173X
424	Clorox Chemical Co. advertisement reprint	174X
429	Letter, The Clorox Company to The Paul E. Kroehle Co., January 24, 1958	175X
437	Freight as percentage of gross sales price per case of Clorox bleach	177X
438	Purex Corporation, Ltd. Annual Report, 1957	178X
443	Purex Corporation, Ltd. net sales of liquid bleach 1952-1957	187X

* Pursuant to a stipulation approved by the Court, the *In Camera* exhibits have been printed in a separate volume, which is the last volume of the Joint Appendix.

NUMBER	Description	PAGE
* 444	Purex Corporation, Ltd. advertising and promotion expenses on U. S. liquid bleach. *In Camera* volume	427X
447	Leading National Advertisers—12 months 1957	188X
450	Erie, Pa., Liquid Bleach Audit	189X
454	Purex Corporation, Ltd. memorandum, October 12, 1957	191X
458	Purex Corporation, Ltd. liquid bleach prices January 1956-April 1958	194X
* 464	Linco Distributing Corporation sales 1952-1957. *In Camera* volume	428X
* 465	Linco Distributing Corporation selling prices. *In Camera* volume	428X
* 469	Linco Distributing Corporation advertising expenditures. *In Camera* volume	429X
* 472	Hood Chemical Co. Inc. net sales of liquid bleach. *In Camera* volume	430X
473	Hood Chemical Co. Inc. Annual Report, 1957	195X
* 479	Hood Chemical Co. Inc. advertising and promotion expenditures, 1952-1957. *In Camera* volume	431X
* 483	Roselux Chemical Co. Inc. bleach sales, 1952-1957. *In Camera* volume	432X
* 491	J. L. Prescott Co. sales of bleach, 1952-1957. *In Camera* volume	433X
* 492	J. L. Prescott Co. selling prices. *In Camera* volume	434X
* 493	J. L. Prescott Co. advertising and promotional expenditures, 1952-1957. *In Camera* volume	435X
495	J. L. Prescott Co. sales territory, for Dazzle bleach	197X

* Pursuant to a stipulation approved by the Court, the *In Camera* exhibits have been printed in a separate volume, which is the last volume of the Joint Appendix.

NUMBER	Description	PAGE
* 496	Sunlight Chemical Corp. bleach sales, 1952-1957. *In Camera* volume	436X
* 504	Savol Bleach Co. gross sales, 1952-1957. *In Camera* volume	437X
* 510	Gardiner Manufacturing Co., Inc. sales, 1952-1957. *In Camera* volume	438X
* 512	Gardiner Manufacturing Co., Inc. advertising expenditures, 1952-1957. *In Camera* volume	440X
* 519	Roman Cleanser Company bleach sales, 1952-1957. *In Camera* volume	441X
* 522	Roman Cleanser Company advertising and promotional expenditures, 1952-1957. *In Camera* volume	443X
529	Food Field Reporter, September 16, 1957	199X
* 530	Chemicals, Inc. Vano liquid bleach case sales, 1952-1957. *In Camera* volume	444X
531	Vano liquid bleach wholesale price scale	201X
534	B. T. Babbitt, Inc. Annual Report, 1957	202X
535	B. T. Babbitt, Inc. Annual Report, 1956	208X
538	Clorox Chemical Co. and The Clorox Company television spot announcements, 1956-1958	214X
* 540	Percentage of Procter & Gamble 1957 sales accounted for by soaps, detergents and cleansers. *In Camera* volume	445X
571	Nielsen Food Index, Trend Tables 4 and 5, Abrasive Cleansers	217X
* 573E	Procter & Gamble advertising and promotional expenditures for Comet. *In Camera* volume	446X
575	Procter & Gamble television programs as of May 1, 1958	225X

* Pursuant to a stipulation approved by the Court, the *In Camera* exhibits have been printed in a separate volume, which is the last volume of the Joint Appendix.

NUMBER	Description	PAGE
* 577	Procter & Gamble television expenditures—1958. *In Camera* volume	446X
622	Nielsen Trend Table 4, Toilet Soap	227X
624	Nielsen Trend Table 5, Shortening and Lard	231X
625	Nielsen Trend Table 4, Package Detergents	235X
626	Nielsen Trend Table 5, Package Detergents	245X
628	Nielsen Tables 3 and 5, Shampoos	255X
629	Nielsen Trend Table 4, Shampoos	263X
631	Nielsen Trend Table 4, Shampoos	265X
632	Nielsen Trend Table 4, Dentifrices	271X
634C	Nielsen Shares of Ounce Sales on Dentifrices	279X
646	Nielsen Competitive Shares of Liquid Bleach Sales-Southeast	280X
684	A & P case purchases of Bright Sail and Clorox 1956-1958	281X
696	Manufacturer's of liquid bleach in the U. S. (Dun & Bradstreet)	282X
702	The Procter & Gamble Company Annual Report, 1958	292X
707	Field reports by bleach producers	298X
708	Letter from O-So-White Products Co., February 2, 1959	314X
709	Letter from Hydrox Chemical Company, February 2, 1959	315X
710	Letter from American Stores Co., March 12, 1959	316X
* 718	Clorox Promotions, July 1958—Current. *In Camera* volume	447X

* Pursuant to a stipulation approved by the Court, the *In Camera* exhibits have been printed in a separate volume, which is the last volume of the Joint Appendix.

NUMBER	Description	PAGE
721	Nielsen Food Index Tables—Household Bleaches—Consumer Dollar Basis—August-September 1952-June-July 1961 (*In Camera* exhibit, *not* reproduced in the Joint Appendix pursuant to stipulation)	
	RESPONDENT'S EXHIBITS	
64	The Cleveland Press—Cleveland Consumer Panel, April-May-June 1958	319X
69	Tabulation of private label bleaches	320X
71 for identification	Competitive liquid bleach promotions	346X
77	Letter, The Paul E. Kroehle Co. to The Clorox Company, November 10, 1958	360X
78	A & P warehouse purchases, liquid household bleaches	362X
82	Kroger Company (Chicago Division) sales of liquid bleach	363X
* 83	Record of Clorox advertising and sales promotion expense (1952-1958). *In Camera* volume	453X
* 84	Procter & Gamble advertising discount savings as percentage of total 1957-58 advertising and promotion expenditures. *In Camera* volume	455X
88	Nielsen Food Index—Special Report on Erie County, Pennsylvania—Household Bleaches (*In Camera* exhibit, *not* reproduced in the Joint Appendix pursuant to stipulation)	
94	Nielsen Food Index, Total Liquid Bleach Market—Total U. S. (incluidng Clorox) August 1952-July 1958	364X

* Pursuant to a stipulation approved by the Court, the *In Camera* exhibits have been printed in a separate volume, which is the last volume of the Joint Appendix.

NUMBER	Description	PAGE
96	Nielsen Food Index Liquid Laundry Bleach Stock Location Study	365X
97 for identification	Memorandum J. Barth & Co., 1957	368X
108	1956-1957 Top Promotions of the Year Award to Clorox Chemical Co.	369X
112	United States manufacturers of liquid bleach	370X
114	Purex Corporation, Ltd. Annual Report, 1958	391X
117	Nielsen Food Index, Total Liquid Bleach Market—Total U.S. (including Purex brand share) August 1952-July 1958	396X
129	Memorandum dated June 20, 1958, Trimpe to Brown	397X
133	Nielsen Food Index Tables—Household Bleaches—32 oz. Equivalent Unit Basis—August-September 1952-June-July 1961 (*In Camera* exhibit, *not* reproduced in the Joint Appendix pursuant to stipulation)	
134	Nielsen Food Index—Liquid Household Bleaches—Clorox Share of Market 1953-1961 (32 oz. Equivalent Unit Basis)	399X
135	Nielsen Food Index—Liquid Household Bleaches—Clorox Share of Market 1953-1961 (Consumer Dollar Basis)	401X
136	Nielsen Food Index—Liquid Household Bleaches—By Nine Nielsen Territories—Clorox Share of Market 1953-1961 (32 oz. Equivalent Unit Basis)	403X
137	Nielsen Food Index—Sales Of All Liquid Household Bleaches—Other Than Clorox	421X

Commission's Exhibit No. 6
Procter's Annual Report for year ended
June 30, 1957

THE PROCTER & GAMBLE COMPANY

FEDERAL TRADE COMMISSION
DOCKET NO. 6
IN THE MATTER of The Procter & Gamble Company
DATE 4/10/57 WITNESS
FILED
B. Zeman



LETTER TO SHAREHOLDERS

To the shareholders of The Procter & Gamble Company:

We submit herewith the annual report of The Procter & Gamble Companies for the fiscal year ended June 30, 1957.

Consolidated net sales for the year were $1,156,389,726. After deducting all costs, including depreciation, taxes, marketing and other expenses, the consolidated net earnings of all the Companies for the year amounted to $67,807,376. This was equivalent to $3.44 per share on the average number of shares of common stock outstanding during the year. The comparable figure for the preceding year was $3.05 per share.

During the fiscal year ended June 30, 1957 three quarterly dividends of 45¢ each and a fourth quarterly dividend of 50¢ were declared and paid. So far in the fiscal year beginning July 1, 1957 a quarterly dividend of 50¢ per share has been declared and is payable August 15.

In August 1956 the Company completed the acquisition of the various parts of the Duncan Hines business, thereby entering the baking mix business with cake mixes, pancake mixes and others. In January 1957 the Company completed the acquisition of Charmin Paper Mills Inc., and thus became a modest factor in the paper tissues business. Marketing of both the Duncan Hines mixes and the Charmin tissues continues in those sections of the country in which they were being sold by the predecessor companies.

Under its policy of generating the greater part of its growth from within, the Company during the past year has moved forward in practically all the areas of its operation, both domestic and overseas. This has been in the face of intense competition, a condition which naturally follows from the fact that there is ample production capacity in our industries. We feel that the Company has been successful this year, as in the past, in maintaining the growth of its business and, at the same time, maintaining soundly profitable operations.

There are, of course, two major requirements which must be met by a company in order that it may move forward: qualified employees at all levels and adequate financing. On both of these fronts we consider the Company to be well protected.

It has not been a simple matter to staff our organization throughout with top-quality people during these recent years when the demand for quality employees has been heavy from all segments of our economy. However, through insistence on the maintenance of high standards and through vigorous recruitment, we have been able not only to maintain but, in our judgment, to improve the quality of our organization. This is a statement which is of major importance to our shareholders.

The financing of the Company's business has been assured for some considerable period ahead by the issuance of $70 million of 3⅞% debentures in September 1956. As was said at the time, a substantial part of this money was needed to provide for additional woodland and for expansion of the production facilities of our dissolving pulp mill at Foley, Florida. The balance of the funds raised is to take care of further fixed and working capital needs of other parts of the business. The projects for which these funds were intended are proceeding on schedule. Pending the full use of these funds for Company capital purposes, the unused balance has been

invested at a return which is equal to or better than the interest cost of the Company debentures.

In April of this year, an agreement was reached with Clorox Chemical Co. of Oakland, California for the acquisition of the properties and business of that company in exchange for Procter & Gamble common stock. The agreement has been ratified by the stockholders of Clorox Chemical Co. and the acquisition was effectively completed on August 1. While this is a completely new business for Procter & Gamble, taking it for the first time into the marketing of a household bleach and disinfectant, it is one that fits well with the Company's experience in manufacturing and marketing household products.

As we look to the future, we feel that our 56,000 shareholders can join the Management in a feeling of confidence that a combination of well-planned research, competent and imaginative organization, and financial soundness has prepared the Company to take advantage of the opportunities of the future as they are sure to exist.

The Financial Statements showing the consolidated financial position of the Companies as of June 30, 1957, and the results of their operations for the year, together with figures for the prior year, are set forth in the following pages.

Respectfully,

Chairman of the Board

President

Cincinnati, Ohio
August 2, 1957

THE PROCTER &

and Subsidiar

CONSOLIDATED BALANCE

ASSETS	1957	1956
CURRENT ASSETS:		
Cash	$ 42,078,359	$ 42,650,289
U. S. Government and other marketable securities, at cost (approximately market)	61,971,210	4,717,709
Accounts receivable, less reserve of $386,803 for 1957 and $322,361 for 1956	57,704,934	44,931,161
Merchandise and materials, at the lower of cost (partly Lifo) or market	170,576,810	160,734,294
Total current assets	$332,331,313	$253,033,453
LOANS, RECEIVABLES, ETC., less reserves	$ 15,234,813	$ 10,744,624
PROPERTY, PLANT AND EQUIPMENT, at cost:		
Land	$ 13,402,040	$ 11,638,122
Timberlands, less depletion	17,682,236	16,360,784
Buildings and equipment	447,639,947	391,382,830
Total	$478,724,223	$419,381,736
Less accumulated depreciation	155,078,281	138,589,738
Property, plant and equipment, net	$323,645,942	$280,791,998
GOODWILL, PATENTS AND LICENSES	$ 6,433,758	$ 2,519,993
PREPAID EXPENSES AND DEFERRED CHARGES	$ 10,626,797	$ 7,026,018
TOTAL	$688,272,623	$554,116,086

See notes to financial statements.

GAMBLE COMPANY

Companies

SHEET, JUNE 30, 1957 AND 1956

LIABILITIES	1957	1956
CURRENT LIABILITIES:		
Domestic bank loans	—	$ 9,000,000
Debt of subsidiaries due within one year	$ 11,761,320	8,657,057
Accounts payable and accruals	77,418,409	69,002,048
Federal taxes on income, less U. S. Government securities of $49,501,700 for 1957 and $51,042,461 for 1956	—	—
Other taxes	15,831,124	12,547,526
Total current liabilities	$105,010,853	$ 99,206,631
LONG-TERM DEBT (maturing after one year):		
Debentures, 3¼% (due 1967 to 1981)	$ 70,000,000	—
Notes, 3¼% (due 1963 to 1972)	30,000,000	$ 30,000,000
Debt of subsidiaries (due 1958 to 1973)	13,564,824	8,642,320
Total long-term debt	$113,564,824	$ 38,642,320
RESERVES:		
Self-insured risks	$ 4,979,665	$ 4,807,978
Foreign exchange fluctuations	2,620,000	2,310,000
Total reserves	$ 7,599,665	$ 7,117,978
CAPITAL AND RETAINED EARNINGS:		
Preferred shares	$ 2,250,000	$ 2,250,000
Common shares	39,737,328	38,823,612
Additional paid-in capital	30,806,920	10,021,672
Earnings retained for use in the business	389,303,033	358,053,873
Total capital and retained earnings	$462,097,281	$409,149,157
TOTAL	$688,272,623	$554,116,086

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STATEMENTS OF CONSOLIDATED EARNINGS AND CONSO

YEARS ENL 3 JUN

EARNINGS

	1957	1956
Net Sales	$1,156,389,726	$1,038,290,374
Cost of products sold	741,093,993	663,096,681
Gross profit	$ 415,295,733	$ 375,193,693
Marketing, general and administrative expenses	277,038,781	254,092,953
Earnings from operations	$ 138,256,952	$ 121,100,740
Interest on investments, etc.	2,993,320	1,462,391
Other income, net	770,568*	310,323
Interest expense	4,036,558*	1,944,765*
Earnings before taxes on income	$ 136,443,146	$ 120,928,689
Federal income taxes	$ 58,880,000	$ 54,240,000
Other income taxes	9,755,770	7,372,218
Total taxes on income	$ 68,635,770	$ 61,612,218
Consolidated Net Earnings	$ 67,807,376	$ 59,316,471

*Denotes deduction.

See notes to financial statements.

GAMBLE COMPANY

y Companies

IDATED EARNINGS RETAINED FOR USE IN THE BUSINESS

30, 1 7 AND 1956

EARNINGS RETAINED FOR USE IN THE BUSINESS

	1957	1956
Balance, beginning of year	$358,053,873	$332,809,212
Add:		
Consolidated net earnings	67,807,376	59,316,471
Total	$425,861,249	$392,125,683
Deduct:		
Common dividends—$1.85 per share in 1957 and $1.75 in 1956 (after applying the two-for-one stock split which became effective on June 1, 1956)	$ 36,378,216	$ 33,891,810
Preferred dividends—$8 per share	180,000	180,000
Total dividends	$ 36,558,216	$ 34,071,810
Balance, end of year	$389,303,033	$358,053,873

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NOTES *to financial statements*

1. Goodwill, patents and licenses at June 30, 1957 includes goodwill of $6,433,757, which represents the excess of the purchase price of going businesses acquired by the Company over the value ascribed to the net tangible assets acquired. It is the Company's present intention not to amortize amounts carried in this account.

2. The debentures (issued and sold at par in September 1956) may be redeemed at the option of the Company, as a whole or in part, at any time, as specified in the indenture. Sinking fund payments are required commencing in 1967.

   The long-term notes may be prepaid at the option of the Company as specified in the loan agreement. Annual prepayments are required commencing April 1, 1963. At June 30, 1957, under covenants contained in the loan agreement, the Company was limited to approximately $142,000,000 as to aggregate payments which could be made for dividends on its capital stock, the purchase thereof, and similar purposes.

3. There were 22,500 shares of 8% (cumulative) preferred stock of $100 par value each authorized and outstanding at June 30, 1957 and 1956; also, at those dates, 457,500 shares of authorized $100 par value preferred stock were undesignated and unissued.

   The authorized common stock of the Company amounted to 25,000,000 shares of $2 par value each at June 30, 1957 and 1956. There were 19,868,664 shares and 19,411,806 shares outstanding at June 30, 1957 and 1956, respectively.

   During August 1957 the Company will issue 639,578 shares of its common stock for the acquisition of the net assets and business of Clorox Chemical Co.

4. Additional paid-in capital increased in the amount of $20,785,248 during the year, details of which are as follows: $1,072,590 represented the excess of proceeds over the par value of 34,387 shares of common stock sold under the Stock Option Plan; and $19,712,658 represented the excess of the market value over (a) the par value of 422,471 new shares, and (b) the cost of 71,900 treasury shares of common stock exchanged for the net assets or capital stocks of businesses acquired.

5. Under the Stock Option Plan, adopted by the shareholders on October 9, 1951, as amended, ten-year options were granted in 1952 through 1956 to certain officers and employees to purchase common shares of the Company at the market price on the granting dates. Unoptioned shares available for option amounted to 222,400 shares and 300,600 shares at June 30, 1957 and 1956, respectively. Information for the year with regard to the Plan is set forth below:

Option Price	Options (Number of Shares) Outstanding July 1, 1956	Changes During Year Issued	Changes During Year Exercised	Outstanding June 30, 1957
$32.375 (1952)	71,006	—	18,670	52,336
33.688 (1953)	195,192	—	15,047	180,145
44.813 (1954)	104,610	—	670	103,940
49.8438 (1955)	46,786	—	—	46,786
50.875 (1956)	—	78,200	—	78,200
Total	417,594	78,200	34,387	461,407

6. The consolidated financial statements include net assets and earnings of subsidiaries operating abroad stated in terms of U. S. currency, as follows: net assets —1957, $81,882,995; 1956, $75,306,560; net earnings—1957, $11,476,554; 1956, $7,189,849.

7. Depreciation provided: $22,125,764 for 1957 (including $4,085,000 applicable to properties of approximately $21,500,000, being amortized over five-year periods under Certificates of Necessity); $19,486,564 for 1956.

REPORT *of independent auditors*

HASKINS & SELLS

CERTIFIED PUBLIC ACCOUNTANTS

FIRST NATIONAL BANK BUILDING
CINCINNATI 2

To the Board of Directors of
The Procter & Gamble Company:

We have examined the consolidated balance sheet of The Procter & Gamble Company and subsidiary companies as of June 30, 1957 and the related statements of consolidated earnings and consolidated earnings retained for use in the business for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying consolidated balance sheet and statements of consolidated earnings and consolidated earnings retained for use in the business present fairly the financial position of the companies at June 30, 1957 and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Haskins & Sells

August 2, 1957.

SHAREHOLDERS' *meeting*

The next annual meeting of the shareholders will be held on Tuesday, October 8, 1957. The Management intends to solicit proxies for the annual meeting and it is expected that a notice of the meeting, together with a form of proxy and proxy statement, will be mailed to shareholders prior to September 27, 1957.

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HIGHLIGHTS OF THE YEAR

During the 1956-57 fiscal year, the Company's business continued to move forward. This continued progress can best be illustrated by a review of some of the highlight events of the past year.



DIVERSIFICATION

During the past fiscal year, the Company entered the prepared baking mix and household paper tissue fields by adding Duncan Hines prepared mixes and Charmin paper products to the Company's list of consumer brands. Procter & Gamble's technical knowledge and manufacturing experience fit very well into the development and production of these types of products. In addition, both prepared mixes and paper tissue products are low-priced, rapid turnover, household items sold primarily through grocery, drug and department stores—the type of goods which the Company is accustomed to market.



NEW PRODUCTS

During the 1956-57 year, two new Procter & Gamble brands moved into national distribution. These products were Comet cleanser and Big Top peanut butter.

In addition, Blue Dot Duz, a household synthetic detergent, and Zest, a new type bar for face and hands and for the bath, were introduced into a substantial portion of the country.



NEW FINANCING

In September 1956 the Company borrowed $70,000,000 through a public offering of 25-year debentures. Part of the new money is being used in connection with the Foley, Florida dissolving pulp plant: to acquire additional woodland, expand the plant facilities and provide additional working capital. The balance of the new money will be used for capital investment and working capital needed for other parts of the business.



EMPLOYEE RELATIONS

This year the Company noted the 70th anniversary of its first Profit Sharing Plan. Procter & Gamble has always been keenly aware of the fact that little can be accomplished in the way of permanent growth or stability without the loyal and wholehearted interest of Procter & Gamble people. The Company's profit sharing plans which enable Procter & Gamble employees to become shareholders in the Company, combined with its other employee benefit plans, have ensured this interest. Employees who are also part owners of the Company are doubly interested in working for the future progress and growth of Procter & Gamble.

Commission's Exhibit No. 12
Financial statement of Clorox Chemical Co. for year ended June 30, 1957

CLOROX CHEMICAL CO.
(a dissolved corporation)

REPORT UPON EXAMINATION OF FINANCIAL STATEMENTS

For the fiscal year ended June 30, 1957

FEDERAL TRADE COMMISSION
DOCKET NO. 8811. COMMISSION EXHIBIT NO. 12
IN THE MATTER OF: The Procter & Gamble Company
DATE 12/16/57 WITNESS
ACE REPORTING CO., Official Reporters
BY

LYBRAND, ROSS BROS. & MONTGOMERY
CERTIFIED PUBLIC ACCOUNTANTS
SAN FRANCISCO OFFICE

LYBRAND, ROSS BROS. & MONTGOMERY
CERTIFIED PUBLIC ACCOUNTANTS

COOPERS & LYBRAND

To the Board of Directors,

Clorox Chemical Co.,
a dissolved corporation,

Oakland, California.

We have examined the balance sheet of CLOROX CHEMICAL CO. (dissolved August 16, 1957, Note 1) as of June 30, 1957 and the related statements of income and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying balance sheet and statements of income and earned surplus present fairly the financial position of Clorox Chemical Co. at June 30, 1957, and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Lybrand, Ross Bros. & Montgomery

San Francisco, California,
September 5, 1957.

CLOROX CHEMICAL CO.
(a Delaware corporation)
BALANCE SHEET, June 30, 1957

ASSETS:

Current:		
Cash in banks and on hand		$2 054 237.64
Marketable securities, including accrued interest:		
U. S. Government securities	$2 932 372.49	
Less, amount applied against liability for federal income taxes	2 339 045.69	
	593 326.31	
State and municipal securities	1 251 232.77	
		1 845 759.58
Accounts receivable, less allowance for losses		1 657 933.92
Inventories, at the lower of cost or market		1 835 757.77
Total current assets		7 393 733.91
Property, plant, and equipment, at cost:		
Buildings and equipment	6 755 162.40	
Less, reserves for depreciation	2 127 333.39	
	4 627 329.01	
Land	410 151.61	
		5 037 480.62
Prepaid expenses:		
Prepaid advertising and display materials	71 642.12	
Unexpired insurance, taxes, etc.	186 513.74	
		193 155.86
Trade-marks		1.00
		$12 629 425.79

LIABILITIES:

Current:		
Accounts payable and accrued expenses		$1 294 502.79
Accrued taxes:		
Federal income taxes	$2 339 045.69	
Less, U. S. Government securities	2 339 045.69	
Other taxes	191 630.07	191 630.07
Total current liabilities		1 486 132.86

Contingent liability:

Under terms of marketing arrangements, the company may be called upon to repurchase merchandise in the hands of its distributors.

CAPITAL:

Capital shares, par value $3.33-1/3 per share, authorized 750,000 shares, outstanding 724,794 shares	$4 016 273.00	
Earned surplus, details annexed	7 127 014.93	11 143 287.93
		$12 629 425.79

Notes:

1. Under the provisions of an agreement with The Procter & Gamble Company executed April 22, 1957, Clorox Chemical Co. transferred on August 1, 1957 all of its assets, subject to its liabilities, to The Clorox Company (a wholly-owned subsidiary of The Procter & Gamble Company) in exchange for Procter & Gamble common stock. On August 14, 1957, the stockholders of Clorox Chemical Co. approved a proposal for the dissolution of the corporation and on August 16, 1957 the corporation was dissolved.

2. Under the company's Restricted Stock Option Plan the following stock options were outstanding June 30, 1957:

Date Option Granted	Option Price	Number of Shares
Oct 10, 1955	$23.75	21,200
Dec 21, 1955	$29.50	6,500

Subsequent to June 30, 1957 and prior to the dissolution of the company on August 16, 1957, the options for all of the above shares were exercised.

3. The consulting actuaries for the company estimate the total amount necessary to fund the company's pension plan for salaried employees with respect to past service to be approximately $337,000 at June 30, 1956.

STATEMENT OF INCOME

For the fiscal year ended June 30, 1957

Net sales			$39 999 114.11
Cost of sales and selling, advertising, and administrative expenses (including depreciation of $317,473.25)			34 714 041.12
Profit from operations			5 285 072.99
Other income:			
Interest earned		$99 167.60	
Miscellaneous		22 012.33	
		121 179.93	
Other expenses:			
Obsolete labels destroyed	$33 092.57		
Loss on disposition of capital assets	23 760.91		
Miscellaneous	20 054.61	31 903.09	
Other income, net			89 276.84
Income before federal income taxes			5 324 344.83
Provisions for federal income taxes:			
Current year		2 743 000.00	
Adjustments of prior years		12 173.17	2 755 173.17
Net income			$2 569 166.66

STATEMENT OF EARNED SURPLUS

For the fiscal year ended June 30, 1957

Balance, July 1, 1956	$5 733 256.32
Net income for the year, as above	2 569 166.66
	8 302 423.48
Deduct, cash dividends at the rate of $1.70 per share	1 230 403.55
Balance, June 30, 1957	$7 107 014.93

Commission's Exhibit No. 14
Procter's application for listing on New York Stock Exchange dated August 20, 1956

DEPARTMENT OF STOCK LIST
NEW YORK STOCK EXCHANGE

THE PROCTER & GAMBLE COMPANY

COMMON STOCK,
Par Value $2 Per Share

Cincinnati, Ohio
August 20, 1956

The Procter & Gamble Company, an Ohio Corporation (hereinafter called the "Company"), hereby makes application for listing on the New York Stock Exchange of not to exceed

60,000 additional shares of Common Stock of the par value of $2 per share upon official notice of issuance to be issued as follows:

(a) approximately 45,456 shares (as hereinafter set forth) to be exchanged for all the common and all the preferred stock of Hines-Park Foods, Inc., provided not less than 97% of the common and 90% of the preferred is offered for exchange, and

(b) approximately 25,544 shares (as hereinafter set forth) to be exchanged for all the outstanding stock of Duncan Hines Institute, Inc.

The total number of shares of Common Stock heretofore listed and for which application is hereby made will not exceed 20,199,000 shares of a total authorized issue of 25,000,000 shares.

Reference is made to previous listing applications of the Company, the latest of which is A-16308, dated May 22, 1956.

AUTHORITY FOR AND PURPOSE OF ISSUANCE

The issuance of the additional Common Shares of the Company's authorized but unissued Common Shares, the listing of which is hereby applied for, was authorized by the Board of Directors of the Company at a meeting duly held on July 10, 1956, under general authority of the Board. It is proposed to issue said shares in exchange for outstanding Capital Stock, Preferred and Common, of Hines-Park Foods, Inc. (hereinafter called the "Food Company") and Duncan Hines Institute, Inc. (hereinafter called the "Institute"), pursuant to a plan and Agreement dated July 3, 1956 with some of the principal holders of such shares. None of the holders of the outstanding Capital Stock of the Food Company or of the Institute are affiliated in any way with the Company, and no officers, directors or principal stockholders of the Company have any direct or indirect beneficial interest in the Food Company or the Institute. In accordance with Sections 1701.13, 1701.15 and 1701.19, Revised Code of Ohio, no other authority is required for the issuance of said shares of Common Stock of the Company.

The number of shares of the Common Stock of the Company to be exchanged for the Capital Stock of the Food Company and of the Institute was determined by negotiations between the parties. In the negotiations, consideration was given originally to exchanging 36,456 shares of the Common Stock of the Company for "special assets" of the Food Company and 24,304 shares of the Common Stock of the Company for "special assets" of the Institute at the then current market price of $49.375 per share. The term "special assets" includes only rights to trademarks and trade names, contracts and licenses, lists of customers, good will and organization expense. It was later decided that it was desirable to exchange Common Stock of the Company for all of the outstanding Capital Stock of the Food Company and of the Institute instead of for only "special assets". Consideration was given to the value of the underlying assets of the two companies other than the "special assets" and to the fact that additional shares of the Company would be exchanged on the basis of stock for stock. At the time this decision was reached, it was agreed to use the then current market value of $50.25 per share for the additional shares required. It was also determined that except for "special assets", the value of the fixed and current assets of the Food Company and of the Institute were to be established as of June 30, 1956, at their "net fair value", which in certain instances was the depreciated book value, in other instances the fair market value and in other instances an agreed upon value.

In approving the Agreement between the Company and the Food Company and the Institute, the Board of Directors determined that the value of the "special assets" was equal to 60,760 shares of the Common Stock. The determination by the Board of Directors of the value of the "special assets" was based on the Company's experience in the cost of establishing brand names with a consumer acceptance, which justifies a determination of the value of "special assets" as part of a going business in excess of the book value of such assets.

On the basis of the foregoing, approximately 69,000 shares of the Common Stock of the Company was established as the aggregate number of shares to be exchanged for the Capital Stock of the Food Company and of the Institute. Using the market value established in the negotiations, the equivalent dollar value of 60,000 shares would equal $3,414,000. Of this amount $138,000 would be credited to the Capital Stock

17X

FEDERAL TRADE COMMISSION
DOCKET NO. 6801 COMMISSION'S EXHIBIT NO. 14
IN THE MATTER OF The Procter & Gamble Company
DATE 12-18-57 WITNESS Benedict
ACE REPORTING CO., Official Reporter
By

account and the balance would be credited to Additional Paid-in Capital. For the purposes of consolidation, that portion of the $3,414,085 which is in excess of the net value of the fixed and current assets of the Food Company and of the Institute, will be treated as good will, patents, trademarks and other intangible assets. This amount will not be amortised. The net value of the fixed and current assets will be determined by using book value in certain instances, fair market value in other instances and depreciated replacement value in the case of fixed assets.

A brief description of the history and business of the Food Company and of the Institute, together with their latest certified financial statements as of December 31, 1955, are set forth in Exhibits A and B attached hereto and made a part hereof.

OPINION OF COUNSEL

The Company has furnished to the New York Stock Exchange an opinion of its Counsel, Messrs. Dinsmore, Shohl, Sawyer & Dinsmore, 12th Floor, Union Central Building, Cincinnati, Ohio, relating to the shares covered by this Application. The opinion states in substance that the Common Stock, application for the listing of which is hereby made, will upon issuance for the purpose aforesaid be duly authorized, validly issued, fully paid and non-assessable, and that no personal liability for any further payment therefor will attach to the holders thereof under the laws of the State of Ohio, the state of incorporation and the state in which the Company has its principal place of business.

STATUS UNDER FEDERAL ACTS

The Securities and Exchange Commission has stated that it will raise no objection if the shares subject to this Application are offered to the holders of shares of the Food Company and the Institute, such offer to be accompanied by a current prospectus of the Company and such offerees to agree to take the shares of the Company for investment and not for resale. Accordingly, Messrs. Dinsmore, Shohl, Sawyer & Dinsmore, Counsel for the Company, have rendered their opinion that the additional shares of Common Stock of the Company for which listing is sought are exempt from registration under the Securities Act of 1933, as amended, as the issuance of such shares as aforesaid will not involve a "public offering" of securities within the meaning of Section 4(1) of said Act; and, further, no application for registration of said shares under the Securities Exchange Act of 1934, as amended, will be required under Rule X-12D-1 of the General Rules and Regulations under said Act.

BUSINESS

While there has been no material change in the general character or nature of the business of the Company or its subsidiaries since the Listing Application No. A-14168, dated February 14, 1952, the Company has continued to develop new products, as described below.

The Company is engaged principally in the manufacture and sale of packaged soaps and detergents, shortening and other food products, and shampoos, dentifrices and home permanents, which are sold under advertised brand names. The Company is one of the larger producers in the United States of soap and detergent products and a major producer in its other principal product fields. Many of the Company's consumer brands enjoy wide distribution and consumer acceptance, but this field of the Company's activities is highly competitive and is subject to quickly and widely varying consumer preferences. The Company operates a number of research and development laboratories for the improvement of its products and processes and the development of new products, as well as an extensive market research department to determine consumer preferences. New products are frequently introduced by competitors as well as by the Company, often to the detriment of old and well-established brands. Presently, the Company is distributing to selected test markets Bix, a liquid detergent; Comet, a cleanser; Zest, a toilet detergent bar; Whirl, a liquid shortening, and Jif, a peanut butter. New brands currently enjoying a national distribution include: Joy, a liquid detergent; Crest and Gleem, dentifrices; Golden Fluffo, a colored shortening; and, Big Top Peanut Butter and Salted Peanuts.

Net sales of the Company and its subsidiaries for the five fiscal years ended June 30 since the Listing Application No. A-14168, dated February 14, 1952, were as follows:

1952	$ 818,084,883
1953	860,968,813
1954	911,050,043
1955	965,795,180
1956	1,088,690,274

PROPERTY DESCRIPTION

Major changes in the properties of the Company, and in those of its subsidiary companies since February 14, 1952, the date of the Company's last previous application for listing containing a property description are described as follows:

In 1953, a factory for the production of detergents was completed in Sacramento, California, and the production and packaging of Company products began during the early part of that year. The plant is located on approximately 158 acres of land.

The Company has been producing alpha cellulose (chemical or dissolving pulp) from cottonseed linters for many years. The demand for this product for use in the manufacture of cellophane, rayon, other synthetic fibers and film has increased substantially in recent years. Because the supply of cottonseed linters is limited by the size of the cotton crop the Company completed construction of a mill at Foley, Florida, in 1954 and began the production of alpha cellulose and other grades of pulp from wood. Approximately 200,000 additional acres of timberland were purchased by the Company in northwestern Florida in 1956.

In February, 1955, construction was begun on an addition to the Company facilities in Chicago. This plant, which will be in production later this year, will be used for the manufacture of edible products. The Company facilities in Chicago occupy approximately 13 acres of land and are of concrete, brick and steel construction.

In the summer of 1955 the Company acquired W. T. Young Foods, Inc., of Lexington, Kentucky, manufacturers of Big Top Peanut Butter and Big Top Salted Peanuts. This acquisition added one story, brick and steel, office, factory and warehouse buildings occupying approximately 12 acres of land to the real property of the Company.

The Company purchased 78 acres of land in Iowa City, Iowa, on which a second factory for the production of drug products is nearing completion.

A new General Office Building is nearing completion at the southeast corner of Sixth and Sycamore Streets, Cincinnati, Ohio. It is expected that the building will be ready for occupancy early in the fall of 1956. During the fall of 1954 the Gwynne Building and annex in which the General Offices of the Company had been located for a great many years were sold, and are now being occupied on lease.

The Miami Valley Laboratories, a modern two-story brick, concrete and steel building, is located seventeen miles from downtown Cincinnati, on a 240 acre tract in Hamilton County, near Venice, Ohio. The building is well equipped with the most modern research and development facilities. The increasing importance of research and development work made necessary the construction of additional laboratory facilities which were completed in mid-1955, adding 50,000 square feet of space to the existing 126,000 square feet. Both buildings and land are owned in fee by the Company.

A subsidiary in France has leased production facilities for synthetic detergents which are being distributed through an agent. A synthetic detergent plant is under construction in Belgium and a subsidiary has been organized to produce and sell in that country.

All the Company's subsidiaries are listed below:

SUBSIDIARY COMPANIES OWNED OR CONTROLLED THROUGH CAPITAL STOCK OWNERSHIP AS OF JUNE 30, 1956

Name of Company	Percentage of Voting Power*
The Procter & Gamble Manufacturing Company	100%
The Procter & Gamble Distributing Company	100%
Procter & Gamble Productions, Inc.	100%
The Buckeye Cellulose Corporation	100%
Traders Oil Mill Company	100%
The Hewitt Soap Company, Inc.	100%
W. T. Young Foods, Inc.	100%
**The Procter & Gamble Transportation Company	100%
The Procter & Gamble Defense Corporation	100%
The Procter & Gamble Trading Company	100%
The Procter & Gamble Commercial Company	100%
The Procter & Gamble Company of Canada, Limited	100%
Victory Soya Mills Limited	100%
Sabates, Sociedad Anonima	100%
The Procter & Gamble Products Company of Cuba, S. A.	100%
Thomas Hedley & Co., Limited	100%
**Procter & Gamble, Limited	100%
Philippine Manufacturing Company	100%
Procter & Gamble Indonesia	100%
The Procter & Gamble Products Company (South Africa) (Proprietary) Limited	100%
Procter & Gamble de Mexico, S. A. de C. V.	100%
Procter & Gamble de Venezuela, C. A.	100%
Procter & Gamble A. G., Lusern	100%
Procter & Gamble Geneva S. A.	100%
Procter & Gamble Belge, S. A.	100%
Procter & Gamble France S. A.	100%
Procter & Gamble de Colombia, S. A.	100%
Procter & Gamble del Peru, S. A.	100%
Procter & Gamble Italia, S.p.A.	100%

*Percentage of voting power includes directors' qualifying shares.

**Designates inactive subsidiaries.

SALES MANUAL

TOILET GOODS SALES DEPARTMENT

Commission's Exhibit No. 17
Procter sales manual for toilet goods sales department

FEDERAL TRADE COMMISSION
DOCKET NO. 6801 EXHIBIT NO. 17
IN THE MATTER OF The Procter & Gamble Company
DATE 12-18-57 WITNESS
ACE REPORTING CO., Official Reporter
By

The Procter & Gamble Distributing Company
Sales Training & Methods Department
Cincinnati, Ohio, U.S.A.
June, 1957

20X

COMPANY SALES ORGANIZATIONS

THE CASE SOAP SALES DEPARTMENT

The Case Soap Sales Department sells the Company's packaged household soaps and synthetic detergents. Case Soap salesmen call on the wholesale and retail grocery trade and all allied outlets. The department is divided into Sales Divisions, Districts, Units, and Sections.

The Appliance Trade Sales Department cooperates with the Sales Districts of the Case Soap Sales Department in securing the endorsement and merchandising support of all levels of the appliance industry for the Company's washing machine and dishwasher products. The Department Manager directs the work of a General Supervisor, several Zone Supervisors, and the Field Representatives.



THE CASE FOOD SALES DEPARTMENT

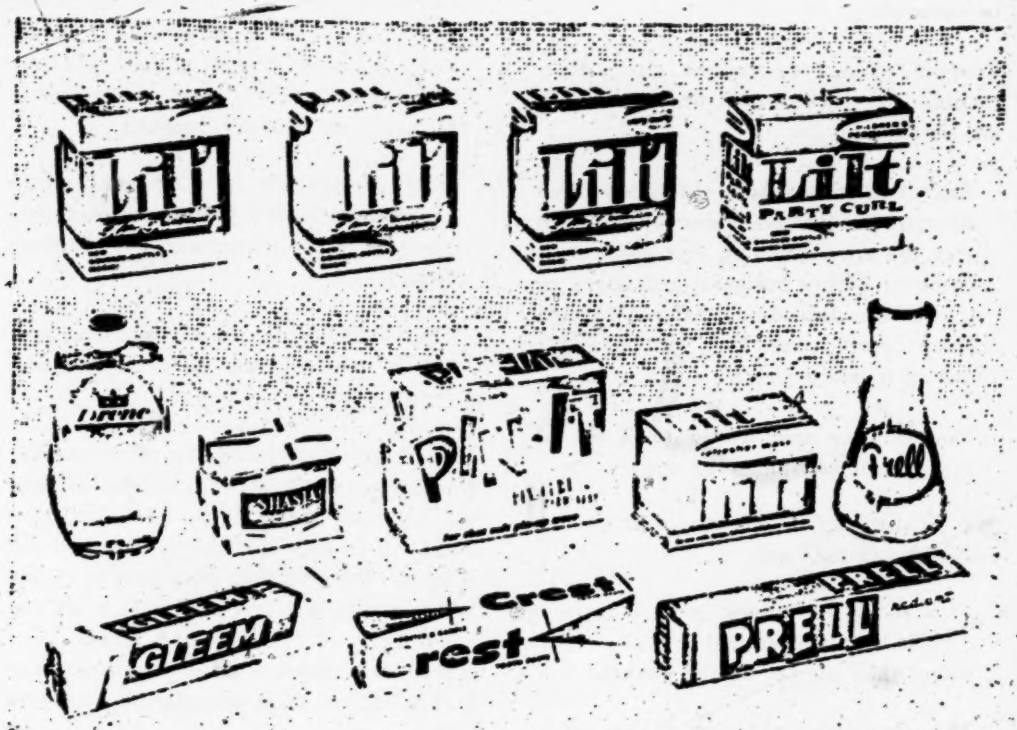
The Case Food Sales Department sells the Company's household edible products to the retail and wholesale grocery trade. The department is divided into Regions, Territories, Zones, and Sections.



THE TOILET GOODS SALES DEPARTMENT

The Toilet Goods Sales Department sells the toiletries products manufactured by the Company. Toilet Goods salesmen call on the wholesale and retail trade connected with the drug, grocery, variety, and department store businesses. The department is divided into Regions, Areas, Zones, and Territories.

The Beauty Trade Division, a separate operation within the Toilet Goods Sales Department, sells Professional Drene to beauty shops, beauty schools, and beauty supply jobbers.



THE MILITARY RESALE DEPARTMENT

The Military Resale Department is responsible for the sale of Case Soap, Case Food, and Toilet Goods brands to United States Military Bases throughout the world. These products are resold through commissaries, post exchanges, ship stores, and veterans' canteens. The Department Manager supervises the work of a number of Military Representatives.

BUILDING GOODWILL

When you have a dealer's goodwill, you have his confidence; your entire relationship is more pleasant; and with less effort you get better results in sales and merchandising. With it your brands will be favored when a decision is to be made as to what should be displayed, which brands are to have preferred shelf space, or which brands are to be featured.

Goodwill cannot be bought. It must be earned. The principles on which it is built are simple.

The customer must have confidence in you. He must feel that you know your business, that you are acquainted with some of the problems of his business, and above all, that he can depend on what you tell him. Never promise more than you can fulfill; live up to every promise made.

The customer must be aware of the advantages of handling your line.

The requisites of brands or products that a dealer should push are:

They should fill a basic need. (Procter & Gamble brands must qualify in this regard before they are put on the market.)

They should be made right so they can be recommended without reservation. (Procter & Gamble research and production methods assure this. The quality of P&G brands is unconditionally guaranteed.)

They should represent good value for the consumer. (Procter & Gamble brands are priced right so that they represent the greatest value at the lowest possible price.)

They should be easy and inexpensive to handle. (Procter & Gamble brands are non-perishable and easy to handle. They have a lower handling cost than most items.)

They should sell well. (Procter & Gamble brands are pre-sold through extensive advertising.)

They should not require too large an investment. (Procter & Gamble brands can be purchased on a direct basis in relatively small quantities, freight prepaid, and they are readily available from wholesalers in virtually any quantity desired.)

They should show a substantial profit. (Procter & Gamble brands are profitable through fast turnover and low handling costs.)

They should bring repeat business. (Procter & Gamble brands have thousands of loyal users.)

Your brands meet every one of these eight requisites as indicated, and, in addition, they can be used to attract business for other items. It is easy to take these things for granted. The customer often fails to realize how desirable and how profitable is his distributorship of the Procter & Gamble line. It is for this reason that the advantages your brands provide must be repeated again and again.

Here are a few other suggestions for building goodwill.

Develop and maintain a friendly relationship with your customers whether you get an order or not. You will, of course, try hard to get the order, but if you don't, always leave the customer with the feeling that you will be glad to see him on your next trip and that you and he will then be able to do business.

Do not slight a clerk. In his present capacity he is able to help the sale of your brands and at some future time he may be the owner or manager of the business.

Do not make uncomplimentary remarks about a competitor or his products. This does not mean, however, that you should refrain from calling attention to the advantages and superiority of your brands.

At every opportunity, tell your trade about the Company's personnel policies, such as guarantee of regular employment and profit sharing. Make it clear that lower manufacturing costs, lower sales costs, superior buying, advertising power, and above all, loyal personnel have made the Company a leader in the industry.

In every situation, represent the Company faithfully, standing squarely for all its policies and ideals. Reflect your belief in your Company.

SALES MANUAL

CASE GOODS SALES DEPARTMENT

Commission's Exhibit No. 18
Procter's sales manual for case good sales department

FEDERAL TRADE COMMISSION
DOCKET NO. 6801 COMMISSION EXHIBIT NO. 18
IN THE MATTER OF The Procter & Gamble Company
DATE 12-18-57 WITNESS
ACE REPORTING CO., Official Reporter
By

The Procter & Gamble Distributing Company
Personnel Research Department
Cincinnati, Ohio, U. S. A.
June, 1955

26X

Selection, Training and Promotion

Since the progress of the Company depends upon the men who are part of it, the management considers careful selection and training one of its most important responsibilities. Only those men who seem to possess the necessary qualifications for success are employed; and after a man is employed, every effort is made to help him succeed. Every new employee is given thorough initial training in his job, followed by continual training throughout his career with the Company.

Careful selection and training make possible the attainment of the Company's policy of filling higher positions from within the organization and affording each man the opportunity to progress to the limit of his ability.

Salesman's Added Compensation Plan

The Salesman's Added Compensation Plan rewards salesmen for increasing sales and for operating economically. Annual added compensation goals are set for each District, and payment is made to those men in the District who are eligible, provided the District goals are attained.

Service Emblems

All employees who have been with the Company for at least five years are given service emblems. There is a sterling silver pin or button for five years and ten years of service, a gold one for fifteen and twenty years; and for twenty-five years, a diamond is added to the gold emblem. The Company is proud of the long service record of many of its employees. More than eight hundred of the men and women now at work with the Company have been awarded diamond emblems.

THE SALES ORGANIZATION

The sales organization is a vital part of the Company, as the growth of the business depends to a great extent on the effectiveness of our sales organization.

The Case Goods Sales Organization

The Case Goods Sales Organization is the largest of the Company's sales departments and is responsible for sales of the Company's household soaps, synthetic detergents, and shortening. The United States is divided into six Sales Divisions, each headed by a Division Manager.

Districts are divided into Units, each headed

THE MANUFACTURE OF SYNTHETIC DETERGENTS

History records that soaps were made over 2,000 years ago. It is only recently, however, that a new type of cleaning product involving a basic change in manufacture appeared on the market. These new products are called synthetic detergents, but are often popularly referred to simply as "detergents." Procter & Gamble's research contributed significantly to the development of this new type product.

Synthetic detergents do the work of soaps, but in their manufacture there are marked differences between the two. The production of soap is basically a simple combination of fats and oils with an alkali. A synthetic detergent is produced by chemical synthesis using a wide variety of raw materials. These raw materials are subjected to a series of chemical modifications before they are ready for the final processing. These modifications produce what chemists call "intermediates," which are then mixed with other materials and sometimes with other intermediates. This combination is finally processed into the finished product. It may readily be seen that these processes are much more complex than those used in soapmaking. Special stainless steel equipment and the most modern of automatic and remote controls are features of the specialized equipment necessary.

Synthetic detergents can make suds and clean effectively in any kind of water — hard or soft, fresh or salt. Synthetic detergents are used in the home for heavy duty wash, dishes and glassware, hosiery, woolens, cottons, and fine fabrics. They are also valuable for many intricate processes in textile and other industries.

In the early 1930's, the Company introduced Dreft, the first successful synthetic detergent for household use. Tide was the first product of this kind especially designed for the heavy duty family wash. Thus, an entire family of detergents, first introduced to American households by Procter & Gamble, has developed into a new industry, notably supplementing, but not supplanting soaps.

This is just one remarkable example of how important product research and development can be and will continue to be in the growth of Procter & Gamble. It represents a development in which every housewife in America is concerned. The birth and growth of synthetic detergents is one of the newest and most amazing chapters in the story of detergents.

TYPES OF SOAPS AND SYNTHETIC DETERGENTS

Heavy Duty Packaged Products — Into this group fall such items as Tide and Duz, designed for use in the family wash and for general household cleaning chores.

Light Duty Packaged Products — Brands of this type, such as Ivory Snow and Dreft, are especially produced for fine fabric care and dishwashing and at the same time are gentle to hands.

Milled Soap — Camay, designed for skin and beauty care, is a fine, milled soap. Milling refers to the process of grinding and combining soap with perfume and other ingredients in large stone or steel rollers. This action gives the product harder composition than soaps which have not been milled.

Extruded Soap — Ivory Soap is an all-purpose product. Its production involves mixing in high-speed equipment. From the mixer, the soap is whipped in a freezer, which congeals the warm Ivory mixture to a smooth consistency and turns out an endless oblong of white soap.

Framed Soap — Some bar soaps, such as Lava, are made by pouring soap into large iron boxes, or "frames." After the soap has solidified, it is cut and shaped to the desired design.

ADVERTISING

History

Early in the "eighties" the small firm of Procter & Gamble, after considerable deliberation, decided to invest the "tremendous" sum of $30,000 in advertising Ivory Soap. The decision appeared to be a risky one, for advertising was not generally considered a safe investment in the opinion of businessmen of those days. But the result was eminently successful. From that time on the Company has been a pace setter in advertising activity.

First to use full-color advertisements, first to use a radio network for advertising — these are evidences of the Company's leadership in advertising through the years. As the Company expanded its list of products, each newcomer was given its full share of advertising support.

Each brand owes some of its present success to the Company's progressive advertising policy.

Advertising Policies

Since that day in the early "eighties" Procter & Gamble products have always been supported by vigorous, truthful, and hard-hitting advertising. Long before there were laws and codes to keep advertising truthful, the Company followed the practice of being scrupulously honest in all statements to the public.

The Company constantly endeavors to select, on the basis of experience and research, the best advertising themes and the best media to carry its sales messages to the consumer.

The expenditures required to keep the Company's brands before the public and to gain wider consumer acceptance for them must necessarily be large. The soap and shortening industry is highly competitive.

Media

Nearly one billion Procter & Gamble advertising messages are delivered to the housewives of America each week through the nation's principal advertising media. This huge volume of advertising makes it extremely unlikely that any woman in the country can go through a normal week without being reminded at least once of the quality of our products, if not on her favorite television program, then over the kitchen radio as she washes the family dishes, on the back cover of her favorite women's magazine, or in the evening newspaper which she studies to prepare for her weekly marketing.

All of the four media, television, radio, magazines, and newspapers, have one important thing in common, the ability to deliver a large volume of advertising to consumers of Procter & Gamble products. Beyond this they have individual characteristics which make each especially suitable for the Company's needs.

Television — The combination of sight and sound, available only in television, makes that medium the closest thing possible to an actual sales interview with the consumer. The Company's experience in introducing new products has shown that television is one of the most effective media which we have ever used.

The popularity of television as a means of home entertainment offers a truly remarkable means of selling to vast audiences of people. Many television set owners spend more time watching television than they spend at any other activity except working and sleeping.

Procter & Gamble has advertised on television since its beginning, using a variety of program types to reach great masses of television set owners. By using audience participation, dramatic and comedy programs both day and night, our advertising is carried to all kinds of people, regardless of their particular program preference.

Daytime programs offer a bonus to our products in that they are watched by housewives who are in the middle of household duties for which our products have been specifically designed.

Night-time programs increase the Company's selling opportunity by reaching people who are either out of the home during the day or who do not watch our daytime shows regularly.

Radio — Television's phenomenal early growth tends to draw attention away from its older brother, radio. Yet radio continues to exert a powerful influence in the field of advertising media. Nearly every home in the country has at least one radio set.

Procter & Gamble has consistently used daytime serials in radio. Some of our programs have been on the air since the middle '30's. Ma Perkins on radio is listened to faithfully by millions of women every day—many of whom also own a television set.

As is true with television, daytime radio serials, broadcast five days a week every week, give the Company an opportunity to build up a heavy frequency of commercials in listening homes. Because a woman who buys household products buys them often and because she uses them frequently in the home, testing their quality and performance many times each week, we need to tell her again and again what she can expect in the way of superior quality and performance from our products.

In addition to our network programs, Procter & Gamble announcements, placed between other popular early morning and evening radio programs, reach women who for one reason or another are unavailable at the time our programs are broadcast.

Magazines — Magazines offer three important advantages above and beyond those provided by television and radio.

The first is color. The use of color in the Company's magazine advertisements helps create in the consumer's mind a clear and accurate impression of how the product looks. Such visual impressions help the consumer to recognize our products and recall

their advertised advantages when she sees them in the store. Due to the trend toward greater and greater volume in self-service stores, the Company is increasingly more dependent upon a housewife's ability to select our products by herself. Color is therefore more important than ever in our advertising.

Pictures of appetizing foods, attractive complexions, or dazzling white clothes are important assets in emphasizing the results which the advertising message promises.

The second advantage which magazines have is the environment which they offer for our advertisements. An Ivory Snow advertisement for use in washing baby clothes is unquestionably enhanced in its effectiveness by appearing in Parents' Magazine — a publication which helps new mothers with their problems of child care. Almost all of the magazines which the Company uses give us this bonus, whether in terms of recipes, home decoration, or beauty care.

Finally, the magazines Procter & Gamble uses enable us to tell our messages to women whom we may not have reached either through our radio or television programs.

Newspapers — As is true in the other media, Procter & Gamble is one of the largest users of newspapers for advertising. Most of our activity is in the field of Sunday supplements and comics. These supplement sections permit the Company to retain the advantage of color and secure concentrated coverage of the market.

Another advantage of newspapers is the opportunity which they give us to focus our advertising on specific localities, an important requirement in the introduction of new brands.

Other Media — Occasionally the Company uses outdoor posters, car cards, or other additional means of concentrating messages in a certain geographical area.

In addition to advertising to consumers, the Company also uses the leading publications of the grocery trade. By showing the dealers the advantages of tying in with our promotions and by building dealer goodwill, these advertisements help pave the way for your call.

Brand Promotions

In order to provide the consumer with an additional incentive for buying our products, the Company uses mail-in offers, contests, coupons, and other effective sales promotions.

Contests — Contests have long been one of the most popular forms of promotion used by the Company. The wrapper or box-top facsimile requirement encourages the consumer to buy the brand in order to enter the contest. In fulfilling the requirements of stating why she uses or likes the product, or in naming the most popular uses for the product, she, in effect, convinces herself of the superiority of that brand.

All contests are judged by an independent organization with a highly trained staff specializing in that work. Judging is done entirely on the basis of the merit of the entry in accordance with the contest rules. When the judges select the winning entries,

they know neither the names of the contestants nor where they live.

Mail-In Offers — Mail-in offers are selected on the basis of consumer preferences and each is thoroughly tested before being used. Wrappers and box tops are required to obtain the offers. Each year millions of these offers are purchased, and they are very effective merchandising tools.

Couponing and Sampling — At times the Company places coupons or samples in homes to make certain that the consumer has a chance to try our products. This is done either by mail or by crews of distributors who go from house to house. Sometimes coupons are distributed through newspaper and magazine advertisements, special coupon packs of our brands, or through dealers. Coupons, worth a specified amount on the purchase of certain of our brands, make it possible for the consumer to purchase those brands at reduced cost, thus introducing them to new users.

Other Advertising Services

From time to time the Company provides special services to further the use of its brands. Each year hundreds of thousands of booklets on cooking, sewing, washing, and grooming are sent to high schools and colleges throughout the country. Motion pictures and printed material designed to help teach children the value of cleanliness are offered to grade schools. Booklets on household laundering, care of fine garments, bathing of babies, cooking, etc., are sent direct to consumers who request them or who write to the Company with specific problems.

Doctors are sent samples of Ivory Soap and instructions which they can give to their patients on such subjects as bathing a baby, hygiene in pregnancy, caring for bedfast patients, care of certain skin diseases.

Advertising creates an acceptance for our products, and promotions increase the incentive to buy. However, if these plans are to be effective, the customer needs a visual reminder, an added stimulus to buy, when she is in the store. The Company, therefore, goes to considerable expense to provide you with attractive material for store displays, and other material such as window posters, mats and electros.

CASE GOODS BRANDS

All Case Goods brands are classified as "A" brands with the exception of P and G The White Naphtha which is a "B" brand.

Ivory Soap

Ivory Flakes

Ivory Snow

Camay

Lava

Kirk's Coco Hardwater Castile

American Family Flakes

Duz

Oxydol

Tide

Cheer

American Family Detergent

Dreft

Joy

American Family Soap

Spic and Span

P and G The White Naphtha

Crisco

Fluffo

There is a tendency to think of all nationally advertised brands as being of a uniform high quality, yet impartial laboratory tests again and again show that our products give the consumer greater value than competitive products. When tried out side by side with competitive brands, the superiority of our brands is plainly evident. Their quality and performance represent at all times the best possible value that can be given to the consumers of America.

The following pages give detailed information for each of our brands, their purposes and uses, special advantages, and sales tips.

LARGE SIZE IVORY AND MEDIUM SIZE IVORY

"99-44/100% Pure . . . It Floats"

Ivory Soap has been in the Procter & Gamble line longer than any other product. It has been marketed continuously since 1879, and though it is the oldest product in the Company's line, it is nevertheless as modern and up to date as science can make it. It has long been recognized as the standard of soap purity.

Ivory was the first floating soap ever offered to the public. More than seventy-five years of continuous advertising have made Ivory Soap the best known grocery article in the United States.

Ivory combines purity and mildness with thorough cleaning power. Therefore it is an all-purpose soap — ideal for bathing baby, for adult complexion care, for washing dishes, and for laundry and general household use.

- Ivory is so mild that anything safe in water is safe in Ivory suds.
- Ivory has been recommended for years by doctors everywhere for baby's tender skin and for adult skin care. More doctors advise the use of Ivory than any other soap.
- If we charged a dollar a cake, we could offer no finer soap than Ivory for the skin.
- Ivory is the largest-selling bar soap in America.
- An average grocery store sells more units of Ivory Soap than any other brand of staple grocery-type product in the store.

PERSONAL SIZE IVORY

Personal Size Ivory, representing the high standards of Ivory quality in a toilet soap size, has become America's favorite beauty soap.

The Personal Size cake of pure, mild Ivory Soap is an ideal toilet soap for every member of the family, including the baby.

- It is pure, mild Ivory. There is no finer soap for toilet purposes.
- Personal Size Ivory has the "toilet soap shape" — it fits the hand; it fits the bathroom soap dish.
- Personal Size Ivory should be stacked with other toilet soaps so that its 4-bar value may be readily seen.
- Personal Size Ivory is ideally suited for multiple unit sales in 10 or more bar units because of the unusual value it offers.

IVORY FLAKES

"Ivory Flakes — for all fine wash by hand or machine"

Ivory Flakes was introduced in 1918 as a special-purpose companion product to Ivory Bar and quickly won acceptance as a fine-fabric soap.

Constantly improved from that time on, it is America's favorite flake soap. In addition to its widespread use as a fine-fabric soap, it enjoys good usage in the dishpan and in the washing machine whenever a truly mild product is needed.

The flake form of baby's Ivory Soap, Ivory Flakes offers unbeatable mildness for hands in the dishpan, for lingerie, for baby clothes and diapers without any sacrifice in dissolving speed or cleaning power.

- Ivory Flakes leaves hands soft and smooth.
- Ivory Flakes keeps lingerie, blouses, and other delicate washables looking new and leaves them soft.
- Baby clothes and diapers washed the Ivory Flakes way won't irritate a baby's sensitive skin.
- Ivory Flakes are tissue-thin for instant dissolving. The cleaning power of these mild flakes is excellent.

IVORY SNOW

"The only soap both Ivory-safe and granulated for efficiency — 99-44/100% pure."

Ivory Snow in its present form was first marketed by the Company in 1937. It is the largest selling light-duty brand — soap or synthetic.

Ivory Snow is pure, mild, white soap in modern granulated form for washing dishes with speed and kindness to hands and for washing all special-care fabrics by hand or in the washing machine.

- Ivory Snow is the only soap both Ivory mild and in the speedy, efficient granulated form women prefer.
- Ivory Snow is the safest possible soap for hands — yet no soap cuts grease faster.
- Ivory Snow is the largest-selling soap for washing diapers and baby clothes and is safe for everything that touches baby's tender skin.
- Ivory Snow is the safest possible soap for items given special care in the washing machine — such as curtains, table linens, and blankets — and provides maximum safety for colors.
- Ivory Snow is unsurpassed for washing fine fabrics by hand — nylons, lingerie, sweaters.
- The wonderful "Beauty Glow" discovery in Ivory Snow actually beautifies fine washables—keeps lovely washables looking lovely far longer.

CAMAY

"The Soap of Beautiful Women"

Camay was first marketed in 1926, with the addition of the Bath Size in 1947. Today Camay is one of the largest sellers throughout the country. The addition of cold cream to Camay in 1953 has made Camay even more desirable to millions of women and has stimulated even greater sales volume.

Camay is used by millions as a complexion soap and bath soap.

- Along with other high-quality ingredients, Camay contains fine cold cream — long recognized by women as a beneficial beauty aid.
- Cold cream has been added to Camay at no increase in cost to the consumer.
- Camay is a soap of unusual mildness that lathers richly and leaves a delicate fragrance on the skin. It is endorsed by doctors and specialists in the care of the skin.
- Camay is a hard-milled soap. That is why it lasts so long.
- Camay enjoys high popularity with women of all age groups and economic levels.
- Camay's fragrance and its sell-on-sight wrapper perfect it for display selling. The appearance of the cake itself — smooth, white, obviously pure — is a big factor in repeat sales.

LAVA

Lava is especially designed for getting dirty hands clean. In fact, nothing on earth cleans dirty, grimy hands faster, cleaner, yet more gently than Lava — "The Hand Soap."

Lava Soap was first marketed by this Company in 1928. Under aggressive advertising and promotion its volume has grown to the point where it is the outstanding leader in its field.

Lava is a cold process pumice soap for cleaning dirty hands quickly and gently, removing dirt, grease, grime, oil, rust, ink, paint, soot, and other stains. It is safe for men, women and children, too.

- Lava makes a rich, white lather even in hard water.
- Lava has the cleaning power that really gets the dirt out, yet is gentle enough for even tender skin. Lava contains the same soothing ingredient used in costly face creams.
- Lava contains no quartz or harmful impurities. It will not scratch the skin.
- Lava is the soap for anybody with dirty hands. Many Lava users work on the farm or in the factory. Lava is also used by the entire family — Dad after working around the house, Mother after working in the garden, and the children after playing in the yard.
- Lava is good for cleaning children's knees and elbows too.
- Lava is the largest selling pumice soap in the world.

KIRK'S COCO HARDWATER CASTILE

"Makes rich lather in hardest water."

Kirk's Coco Hardwater Castile was first marketed by this Company in 1930. It is widely accepted as a popular low-priced and high-quality toilet soap.

Kirk's removes grease and heavy dirt from the hands, face, and body quickly and easily.

- **Kirk's is made from pure coconut oil. The bar is of a generous size.**
- **Kirk's is a quality product which fills the demand for a low-priced toilet soap.**

Kirk's gives instant and abundant lather in hard or soft water — even in cold water. Its lather rinses off quickly and completely.

DUZ

"Duz does everything."

"It's the soap in Duz that does it."

Duz was first marketed by the Company in 1939. The very first sales tests made in four cities confirmed the need for such an all-purpose soap — demand far exceeded the expected sales. Within two years after it was first introduced, Duz was up with the leaders.

Duz gets its greatest usage as a washday product, where its greatest advantage is its ability not only to do an excellent cleaning job, but also to leave clothes softer, an advantage which research shows is very important to women. In addition, Duz's mildness, combined with its strong grease-cutting ability, makes Duz a good dishwashing product too.

- Duz leaves clothes soft and clean, yet no heavy duty product is kinder to hands.
- Duz washes softness in while it scrubs dirt out.
- Duz is supported by heavy advertising and is preferred by millions of women.
- Duz's well-designed package is a natural for display. It features Duz's soap properties and carries the Good Housekeeping Seal of Approval. Even its directions for usage were developed with and approved by the Good Housekeeping Institute.

OXYDOL

"A great detergent that actually beats the sun for getting clothes white!"

Oxydol was first marketed by our Company in 1928. Intensive product development made it a leading factor in the tremendous growth of the granulated soap market. Through the years Oxydol has continued to improve in efficiency and performance. Realizing the increasing consumer trend toward synthetic detergent products, Oxydol in 1952 changed to a brand-new and different synthetic detergent formula. An old and respected brand name, Oxydol now continues to stand for the newest and best in washday products.

Oxydol handles the heaviest wash with ease—gets clothes white and bright. It also cleans the greasiest pots and pans quickly and easily and makes dishes gleam. It is superb for general cleaning around the house.

- **Due to a specially designed formula, Oxydol contains a new kind of whitening ingredient never before used in a leading soap or detergent. Tests using leading suds prove — an Oxydol wash dried indoors, is whiter than any sun-dried wash.**
- **Oxydol removes heavy dirt from clothes with no hard rubbing, yet is safe for colored washables. And in addition, Oxydol is mild and works quickly and easily, even in the hardest water.**
- **Each Oxydol package carries the Ⓤ, indicating that Oxydol has been certified as Kosher and Parve by the Union of Orthodox Jewish Congregations of America.**

TIDE

"Tide's In — Dirt's Out"

Tide, the pioneer all-purpose synthetic detergent, is America's favorite for washing clothes, dishes, and for many other household cleaning tasks. Tide is based on a completely new formula developed after more than 10 years and 200,000 man-hours of intensive research and testing at Procter & Gamble's own laboratories. When it was first introduced, Tide offered outstanding and unique advantages. Further improvements have continued to give Tide a tremendous lead in its field.

- Tide is an all-purpose product that works wonders with the family wash, dishes, fine fabrics, linoleum, woodwork, walls, windows, stoves, refrigerators, dairy utensils, rugs, and many other household items.

- Tide combines unbeatable cleaning power with amazing mildness. A Tide wash is the cleanest, whitest wash possible.

- More women use Tide in their automatic washers — in fact in all kinds of washing machines — than any other product. The makers of leading automatic washers recommend Tide because it offers optimum performance in their machines — giving outstanding cleaning results at low cost and with complete safety. Many manufacturers actually include a free package of Tide in the tub of every new machine as it leaves the factory, providing the brand with a highly effective endorsement.

- Except for stubborn stains, there is no need to bleach or blue with Tide. Tide alone gets shirts, towels, sheets, and other white things dazzling white.

- Tide is completely safe with washable colors, with fine woolens, and with all the new miracle fabrics. With all of its tremendous cleaning power, Tide is extremely mild for hands.

- Each Tide package carries the ⓤ, indicating that Tide has been certified as Kosher and Parve by the Union of Orthodox Jewish Congregations of America.

CHEER

"It's New! It's Blue!"

Cheer, the Company's second entry in the field of heavy-duty synthetic detergents, was developed after nineteen years of intensive research in our laboratories. Consumer acceptance of blue Cheer was so widespread that it quickly became a favorite in homes throughout the country.

New blue Cheer commands a sizable share of the detergent market today because of its ability to produce such clean, white washes. It is widely used for washing dishes, cleaning rugs, walls, woodwork and linoleum, as well as for heavy family wash.

- Cheer contains an exclusive, new "blue-magic" whitener that no other product uses — the newest, most modern way to get clothes white.
- Cheer washes clothes so clean and white that no blueing or bleach is needed. It is safe for washable colors and kind to hands.
- Cheer dissolves instantly even in hardest water.
- Cheer leaves no dishwater scum or cloudy film. Dishes dry clean without wiping.
- Each blue Cheer package carries the ⓤ, indicating that Cheer has been certified as Kosher and Parve by the Union of Orthodox Jewish Congregations of America.

DREFT

"New dishwashing sensation — looks like a lotion — makes water feel like a lotion."

In the early 1930's, the Company introduced Dreft — the first synthetic detergent to be marketed for household use in the United States. In 1954, the Company pioneered with new and improved pink Dreft — the first colored product in the light duty field. Pink Dreft's entirely new formula gives greater mildness and increased efficiency, the two characteristics most valued in a light duty product. These characteristics have been effectively pointed up by pink Dreft's unique qualities — a cosmetic pink color, a rose perfume, and a newly developed soft-feel pink Dreft suds.

Dreft has been traditionally recognized as an outstanding dishwashing product. Now, due to formula improvement, a vast new potential has opened for the product in the machine washing of all special care items from diapers and baby clothes to blankets and the new miracle fabrics, such as Dacron and Orlon.

Each Dreft package carries the ⓤ, indicating that Dreft has been certified as Kosher and Parve by the Union of Orthodox Jewish Congregations of America.

- New pink Dreft dissolves grease the fastest way yet.
- Dishes and glassware washed with pink Dreft dry sparkling clean without wiping or polishing.
- New pink Dreft gives thorough yet safe cleaning of all special care fabrics whether washed by machine or by hand.
- Pink Dreft's non-staining qualities can be easily demonstrated by leaving it in paste form on a piece of white cloth for 15 minutes or so. When the fabric is rinsed, no pink stain remains. The fabric actually looks whiter and brighter due to pink Dreft's outstanding whitening qualities.

JOY

Joy was the first liquid detergent to win strong consumer approval nationally. This success was achieved primarily because Joy is a liquid concentrate tailored from the very beginning of its development to give housewives a specialized product for dishwashing.

Joy is the mildest liquid concentrate for dishwashing it is possible to buy. It is completely non-alkaline and, because of its mildness, it is excellent for fine fabrics, too. Joy's superior grease-cutting performance also makes it excellent for general household cleaning.

- Joy is the mildest liquid detergent it is possible to buy.
- Joy gets housewives away from the dishpan faster.
- Penny for penny, Joy washes more dishes than any other liquid detergent.
- With liquid Joy dishes dry sparkling clean without wiping. No greasy film. No sticky particles.
- With Joy the dishwater looks, feels and smells nice.
- Joy is packaged in a convenient bottle, which is easy to use, and looks attractive in the kitchen and the bathroom.

- Each Joy package carries the ⓤ, indicating that Joy has been certified as Kosher and Parve by the Union of Orthodox Jewish Congregations of America.

SPIC AND SPAN

"Once over — no rinsing, no wiping"

The Company purchased Spic and Span in 1945. The consumers' response to the Company's advertising and promotion of this brand was immediate. Marketing areas were expanded as fast as production facilities would permit, and national distribution was reached in 1947.

The advent of Spic and Span as a nationally advertised volume grocery item brought the cleaner business to the grocer. The large majority of household cleaners are now purchased from grocers — which means additional volume, store traffic, and profit for the grocery trade.

In 1949 a vastly improved Spic and Span was introduced, combining greater cleaning power than ever before with mildness for hands.

Spic and Span cleans linoleum, painted woodwork, walls, floors, furniture, all varnished surfaces, enamel, tile, and porcelain with no rinsing and no wiping.

- There is more Spic and Span sold than all other cleaners combined.
- More women use Spic and Span to clean walls, woodwork and linoleum than any other product in America.
- Its use for cleaning linoleum floors, a very frequent household job, makes Spic and Span a year-round best seller. Spring and fall house-cleaning provide heavy additional volume during those seasons.
- It is the only product of its type supported by national advertising. This means faster turnover, more profit for the dealer.
- Spic and Span can be spectacularly demonstrated by washing a spot on the wall, door, or counter. The result will be more convincing than anything you can say.

The Economy size, packed 12 to a case, counts for 1½ cases statistically.

AMERICAN FAMILY FLAKES

"In and around greater Chicago, preferred for dishes and for laundry over any other package soap"

The American Family name is more than 100 years old. It was first used in 1839 and because of the reputation for highest quality which the product has always enjoyed, American Family Flakes has long been Chicago's favorite package soap.

- Valuable premium coupons are imprinted on all packages; these coupons may be redeemed on a great variety of attractive articles.

- Women can get three-way better washes — white, bright, safe — with American Family Flakes. For dishwashing and other household cleaning jobs, American Family Flakes have amazing grease-cutting ability.

AMERICAN FAMILY SOAP

- American Family Soap is perfect for dishwashing because of its grease-cutting efficiency combined with outstanding mildness to hands. It also enjoys great acceptance for laundry use.

- American Family Soap is economical.

- Each wrapper bears a valuable premium coupon. Many attractive merchandise articles are available for these coupons.

48X

AMERICAN FAMILY DETERGENT

"The first detergent made especially for the hard water in and around greater Chicago."

American Family Detergent is the newest member of the most famous "family" in Chicago which dates back to 1839. The addition of American Family Detergent gives the housewife a choice of either a soap or a detergent under the American Family banner.

American Family Detergent is ideal for laundry, for dishwashing, and for general cleaning.

- **American Family Detergent enables the housewife to obtain the whitest, cleanest wash possible in the hard water in and around Chicago.**
- **As on all American Family products, there are valuable premium coupons imprinted on all packages; these may be redeemed on a variety of attractive premiums.**
- **Each American Family Detergent package carries the ⓤ indicating that American Family Detergent has been certified as Kosher and Parve by the Union of Orthodox Jewish Congregations of America.**

P and G
THE WHITE NAPHTHA SOAP

P and G, one of the Company's oldest brands, was first marketed in 1905. Until wartime shortages caused it to disappear temporarily from dealers' shelves it was the largest-selling bar laundry soap in America.

P and G, The White Naphtha Soap, is an economical soap for all kinds of cleaning, kitchen work, and laundry.

- P and G's suds give quick action in water of any temperature — cool, lukewarm, or hot; and they rinse out rapidly.
- Ounce for ounce, P and G gives big value at low cost.
- Many women who use package laundry soaps wouldn't be without P and G to rub on extra-dirty spots.
- There is good display and identification value in the snappy blue and white wax wrapper — and it seals out air, keeping P and G fresh and easy to use.

50X

CRISCO

"America's best-liked, largest-selling vegetable shortening."

Here are some of the reasons for Crisco's consistent leadership since its introduction in 1911:

1. It is the original hydrogenated, pure vegetable shortening, having been fully homogenized since 1912. Crisco is actually creamier and easier to blend than any other leading brand of vegetable shortening.

2. Crisco developed and introduced the "can't fail" pastry method which assures flaky, tender pie crust every time.

3. Crisco developed and introduced the patented "x" ingredient which makes any cake a better cake. This ingredient also makes "Quick Method" cakes possible. With Crisco and this time-saving method, cakes are lighter, richer, more moist and more tender.

4. Crisco is perfect for all kinds of frying and doctors agree that foods fried properly in Crisco are highly digestible. It is reusable for deep frying and is therefore economical. Crisco does not carry over the flavor of one food to another.

Three major Crisco uses are for making cakes . . . pastry . . . pan-fried and deep-fried foods. Other usages include making hot breads, cookies and all other foods that require shortening.

• Crisco is unconditionally guaranteed. Every dealer is authorized to refund the purchase price if for any reason a consumer is dissatisfied. This guarantee appears on each can. Each can also carries the stamp of approval of the Good Housekeeping Magazine.

• Crisco has no flavor or odor. It helps bring out all the natural flavor of foods with which it is used.

• Crisco's "Recipe Roundup" labels are unique in shortenings. It's the only label, printed inside and outside with 4 different assortments of recipes in each case. These are changed periodically.

• Crisco keeps fresh without refrigeration. Its keeping qualities are superior to lard, butter, margarine, or any competitor's shortening. Because of its exclusive air-free method of packing, Crisco is better protected for freshness. However, excess heat can damage any shortening. Crisco should not be displayed in the direct sunlight during summer months and should never be stored near hot radiators or furnaces.

FLUFFO

"The New Miracle Golden Shortening"

New golden Fluffo is the culmination of 16 years of research. It is a completely new blend of several of the finest shortening ingredients and is made by an exclusive Procter & Gamble process. Because it is made from several ingredients, Fluffo can perform in baking and frying in a superior manner. New Fluffo is golden yellow in color. With golden Fluffo housewives can prepare baked and fried foods that are more golden brown, more appetizing, and more digestible.

- In baking, golden Fluffo for the first time lets the housewife actually see when flour and other ingredients are properly blended with shortening, which is particularly important in pastry and biscuits.
- Golden Fluffo is economical to use. It stays clear and light for deep frying, permitting re-use seven or eight times, even more with proper care. Fluffo does not carry over the flavor of one food to another.
- Golden Fluffo is kitchen guaranteed to give superior baking and frying results. Every dealer is authorized to refund the purchase price if any consumer is not completely satisfied.
- Golden Fluffo requires no refrigeration. It is always ready for instant use.
- Golden Fluffo is a pure shortening — not a table spread.
- Golden Fluffo represents a tremendous new business opportunity. Fluffo gives results that cannot be matched by any competitor's brand.
- Excess heat can damage any shortening. Fluffo should not be displayed in direct sunlight during summer months and should never be stored near hot radiators or furnaces.

52X

Talking Points For Our Brands

Advantages to the consumer and dealer applying to individual brands are listed on the preceding pages. Below are advantages applying to all brands:

1. Our brands are profitable. They have a rapid turnover and yield the dealer a substanial dollar and cent profit.

2. Our brands move—consumers want them. The power of our advertising and the quality of our products join to attract new customers and to keep old customers faithful to our line.

3. Our brands are easy to handle. There is no wastage, no shrinkage, and no spoilage. Our products do not require refrigeration or special handling. Shelf space and display space devoted to our soaps and shortening will show a greater dollar sales volume and profit return than can be obtained from most other grocery items.

Giant Economy Packages — All of our brands — Duz, Oxydol, Tide, Cheer, American Family Flakes, Ivory Snow, Joy, American Family Detergent, Ivory Flakes, and Dreft (in addition to Economy Spic and Span 12's) are packed in the Giant Economy sizes.

No progressive dealer will want to be without the Giant Economy sizes for his customers.

They offer the following advantages to the dealer:

1. He can make the same profit on only ten Giant Economy sales as on twenty-four Regular packages.

2. He earns the same merchandising allowance on ten Giant Economy packages as on twenty-four Regular packages.

3. His handling costs are reduced considerably. Ten Giant Economy packages can be handled for practically the same cost as ten Regular packages.

4. The Giant Economy package fulfills a real need. With package soap used three or more times daily in the average home, many consumers appreciate having on hand the ample supply which the Giant Economy size provides. It is a convenience as well as an economy.

5. Consumers are educated to think in terms of economy-sized packages; hence, the Giant Economy package is an excellent impulse sales item.

WHAT HAS TO BE DONE AND WHY

The four responsibilities of your job are:

I. TO SELL
II. TO HELP THE TRADE RESELL
III. TO BUILD GOODWILL
IV. TO OPERATE EFFICIENTLY AND ECONOMICALLY

We shall consider each of these responsibilities individually to see what constitutes a job well done.

I. To Sell

Your selling responsibility is two-fold:

To sell or exceed your sales quota on every brand.

To perfect and maintain distribution for each brand and size.

Your first important selling responsibility is to reach or exceed your sales quota on each brand. These quotas have been carefully determined; they are based on reasonable gains over previous shipments into your territory and represent fair sales objectives. They are important figures in the Company's planning, as the combined quotas for all men form the basis of the production schedules. Added compensation, the profit sharing plans, guaranteed employment, and the Company's continued progress depend upon the attainment of quotas.

In your Section, the responsibility is yours to make sure that each brand moves ahead.

Your second important selling responsibility is to see that all of our brands and sizes are stocked wherever they can logically be sold, i.e., to perfect and maintain distribution.

When a consumer looks for one of our brands, fails to find it on the dealer's shelf, and purchases a competitive brand, that sale is irrevocably lost for you and the Company. When the consumer insists on getting our brand and goes to another store for it, a sale is irrevocably lost for the dealer and he may even be losing a customer.

The Company's advertising and goodwill have created a huge demand for our products, and you have the responsibility of seeing that stocks in the stores in your Section are adequate to fill this demand. Allowing a dealer to run short on a brand hurts his business; he cannot sell what he doesn't have, and he cannot make a profit on what he doesn't sell.

II. To Help The Trade Resell

Only when our products find their way into the home are they consumed and does repeat business result for the dealer and the Company.

When the consumer enters the store, she has all kinds of merchandise on her mind, a shopping bag in her hand, and money in her purse. What she finds in the store with respect to

the display of our brands and the shelf space and position they occupy will greatly influence her buying. Soaps and shortenings are often purchased solely on impulse. Just seeing our brands in the store may remind the consumer that they are needed at home or influence her to choose ours rather than a competitive product.

Newspaper featuring by the trade also has its place in the merchandising of our products. Picture what happens: In the morning Mrs. Consumer hears a radio program and its commercials for one of our brands — let's say Ivory; in the afternoon, as she thumbs through her favorite magazine, she sees colorful Ivory ads; at night she hears another Ivory radio program. All week long Mrs. Consumer has been told the Ivory message. Then, on the grocery advertising day, as she goes through her newspaper to make up her shopping list, she finds Ivory featured by several of her favorite stores. As a result, the chances are that Ivory will be entered on her shopping list. Featuring by the trade is a vital link between our advertising message and completing the sale to the consumer.

From the dealer's point of view, our brands with known names and quality and with their daily usage in the home and frequent purchase in the store are ideal for trade featuring.

When a dealer ties in with one of our national promotions, he connects with a powerhouse of advertising that sends women by the millions to stores for entry blanks or recipes. This is tantamount to his shouting, "I've got it! Come to my store!"

If you spend one half hour per call per canvass, you are in the store of the average dealer only 1/500 of the time his store is open. How well the Procter & Gamble brands sell to the consumer during the remainder of the time will be greatly influenced by what you do while you are with the dealer to help resell our brands.

III. To Build Goodwill

The degree of cooperation you are able to get from your trade will be in direct proportion to the goodwill enjoyed by you and by the Company.

How well you are liked and respected by your dealers and how they respond to your suggestions will depend on how you conduct yourself.

How your dealers feel toward the Company will depend upon your handling of their business and upon their understanding of the fairness of our policies and their appreciation of the important role our brands and sales plans play in their business.

Increases beyond expectation in the business our brands enjoy in your Section will be possible when you get your dealers, jobbers' salesmen, chain supervisors, and chain managers all to feel friendly toward you and the Company and to push the sale of Procter & Gamble brands.

In your Section, you are the Company.

HOW TO DO IT

SELLING THE TRADE

CLASSIFICATION OF OUTLETS

All outlets are to be classified on the following basis:

1. Jobbers and cooperative association headquarters will be classified "J"; Chain Headquarters, "CHdq."
2. Self-service chain stores selling 500 cases or more of our brands per year will be classified "CSM." All other chains will be classified "C."
3. Independent dealers are to be classified on the basis of their estimated total annual movement of our brands (soap and shortening) as follows:

VL — 500 cases and up
L — 200 - 499 cases
M — 75 - 199 cases
S — 25 - 74 cases
VS — 24 or fewer cases

To arrive at an estimate of the dealer's total annual movement of our brands, determine from your Call Book records the number of cases purchased from you during the last twelve months and add your estimate of the dealer's purchases from other sources. In the case of a new account, Classification should be set in accordance with your estimate of the volume possibilities of the outlet.

4. Drug stores, department stores, hardware stores, and other special outlets will be classified on the same basis as grocery outlets, but no Call Book sheets are to be prepared on those whose total annual movement of our brands is less than 25 cases.

You should constantly check the Classification of your accounts and make such revisions as are necessary to keep them up to date at all times.

PROMOTIONS

The promotions used by the Company to induce consumers to purchase our brands are very strong sales tools. They give you compelling reasons for perfecting distribution and obtaining volume orders and extraordinary display and featuring.

A promotion may be any one of several types — a contest, a mail-in offer, a special pack, or other special inducement for the consumer. Each type can be made to yield a maximum amount of business through the right kind of sales and merchandising effort on your part.

Whenever a promotion is announced, you can be sure that it will be successful in producing new customers and added business. Careful testing or previous experience has proved it to be effective or it would not be used. You will receive detailed instructions, a tested presentation, and merchandising material for each promotion. Study the instructions carefully and become thoroughly familiar with the presentation to be used.

To gain the most business from a promotion you must

- Plan at least double the volume that would ordinarily be bought of each promotion brand so that the dealer will have sufficient stock to cover his normal requirements plus the extra drain on his stocks which will result from tie-up with the promotion.

- Show the dealer what the offer means in terms of additional business and profit for him. Do this without going into too many details about the offer itself.

Only when the dealer objects to what is planned should it be necessary to go into more detail regarding a contest or mail-in offer. You should, however, be well armed with additional information and talking points so that these can be presented intelligently and forcefully in order to sell the volume planned. With key dealers, make a somewhat more complete explanation of the promotion, stressing particularly the need for and the value to the dealer of strong tie-up in his publicity and display.

- Arrange for extraordinary merchandising support. In stores having a Canvass Objective of ten cases or more, obtain mass displays of the brands involved. Place entry or order blanks and posters in all stores.

Impress upon the dealer that each entry or order blank can help make a sale for him if it is used right. In self-service stores: in addition to a display, place entry or order blanks close to the brands on the shelf. In service stores: place entry or order blanks in the most prominent spots; have them enclosed with outgoing orders. Familiarize the clerks with the offer; get them to push it.

From every advertising account, obtain one or more features for each promotion. Get one feature at the beginning, announcing the offer; try to secure a second when the promotion is at its peak.

If you handle a chain headquarters, arrange for forced drafts to the stores or obtain authority for the store managers to place special orders for the promotion brands.

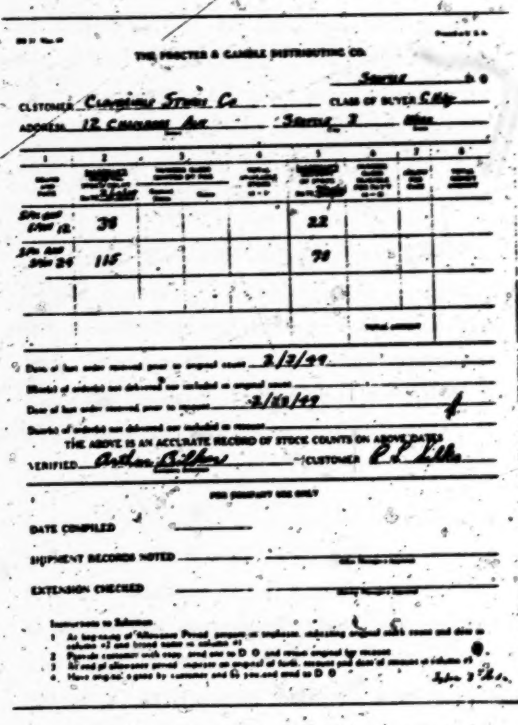
Merchandising Allowance

Occasionally the Company may place a merchandising allowance on a brand for a limited time, as a special inducement to the trade to buy and to push its sale.

For retail dealers, the merchandising allowance will usually be deducted from our invoices.

For jobbers and chain warehouses, the merchandising allowance will generally be handled on a "Count and Recount" basis. Such accounts are billed at the regular list price for the stock they purchase. Their stock is counted at the beginning of the allowance period; to this is added stock received; and from the total is deducted stock on hand at the close of the allowance period, in order to determine the number of cases sold on which the allowance is due. Form DO-27 is used for this purpose.

Detailed instructions for handling each merchandising allowance will always be sent to you.


THE PROCTER & GAMBLE DISTRIBUTING CO.

CUSTOMER Clarence Stone Co. CLASS OF BUYER Chain

ADDRESS 12 Cranberry Ave. Seattle, Wash.

Size and Code No.	30				22			
Size and Code No.	115				79			

Date of last order received prior to original count 3/2/49

Date of last order received prior to recount 3/29/49

THE ABOVE IS AN ACCURATE RECORD OF STOCK COUNTS ON ABOVE DATES

VERIFIED Arthur B. Olsen —CUSTOMER C. F. Lee

FOR COMPANY USE ONLY

DATE COMPILED

SHIPMENT RECORDS NOTED

EXTENSION CHECKED

Instructions to Salesman

1 At beginning of Allowance Period, prepare in duplicate, indicating original stock count and date as indicated at top of form under #1.

2 Provide customer with copy and one to D O and retain original for account

3 At end of allowance period, duplicate an original of both, recount and date as indicated at bottom of

4 Have original count by customer and file you and send to D O

Arthur B. Olsen

On every promotion the results you obtain will be in direct proportion to what you do and how you do it. Ample store stocks are needed to merchandise properly those brands on which there is a promotion, and every worth-while dealer must be sold on the value to him of prominent tie-up, so that he will proceed accordingly in mass display and featuring.

FIELD ADVERTISING

Field advertising consists of couponing or sampling. The distribution of the coupons or samples is accomplished either by mail or by crews who visit each home in a specified area. Sometimes coupons are also distributed through advertisements in magazines and newspapers, or through special packs which contain coupons, or they may be left with a dealer to be mailed to his customers.

The Advance Canvass

An advance canvass is a canvass made prior to sampling or the distribution of coupons. Complete instructions as to the brands affected, the area to be covered, the method of distribution, the general procedure for each campaign, and expected sales volume will be sent to you from your District Office. Fix in your mind the volume requirements for each brand for each size of outlet. Plan heavily for all dealers. Your objective for this canvass must be the sale of sufficient stocks to cover your dealers' regular needs, plus adequate additional stocks to handle coupon redemption.

When specially authorized, two orders may be taken from a dealer during an advance canvass, one covering his regular needs for immediate delivery and the other covering what is needed for coupon redemption, for delivery just prior to coupon release dates.

Whenever field advertising is being done in your Section, it is your opportunity and responsibility to help make it yield the greatest amount of increased business.

Specifically, you are responsible for performing the following functions:

Call on all stores in the area being couponed. The only exception to this may be VS stores, which, if not called on, are to be covered by mail with the aid of a special mailing assembly provided for this purpose.

Explain the plan to every dealer so that he thoroughly understands how, when, and what will be done and what this will mean for his business. Be enthusiastic. Build enthusiasm.

Sell volume. The primary objective of all field advertising is to build permanent consumer business on the brands involved. The results obtained will be greatly influenced by the planning and sales support which you give the campaign. It is your opportunity to obtain complete distribution on all brands and sizes involved and to sell heavy volume.

If for any reason you are in doubt about the salability of store stocks of brands being worked, check these to make sure they are perfect. If they are not salable, follow the instructions for handling unsalable merchandise.

Urge the dealer to ask his customers for their coupons, not merely to wait for them to be brought to the store. The dealer can do this by using the redemption window poster provided by the Company, maintaining mass displays, inquiring of customers in stores, and having telephone and delivery clerks ask customers whether they have coupons to be redeemed.

In the case of an advertising dealer, arrange for prominent features urging redemption to break at the time the coupons begin to reach the consumers and during the following week.

If there is likely to be any misunderstanding concerning coupons that do not have a fixed value, enter the dealer's resale price on his Call Book sheet in the next canvass space for that brand.

You can save many valuable hours for selling by reminding your dealers that they need not wait until your next call to redeem their coupons. Explain that if they will send their coupons to Cincinnati for redemption, the Company will reimburse them for all postage or express costs plus a 2¢ per coupon handling charge. Under this arrangement a dealer may submit coupons to the Company as often as he desires. Supply your dealers with a DO-153 Mailing Envelope, or a DO-213 or DO-227 Mailing Carton and write the store name and address in the return address portion or use the store stamp for this purpose.

Tell them that it is not necessary to count or sort their coupons since this will be done quickly and accurately in Cincinnati. However, if a dealer prefers to compute the money value of his coupons, supply him with Coupon Invoice 2335-GPF. Generally, within three days of the receipt of the coupons in Cincinnati, a check will be mailed. The success of this plan depends to a great degree upon your selling it to your dealers on the advance canvass before the dealer has redeemed any coupons.

This plan is designed to promote goodwill with the trade; therefore, if a dealer insists on having his coupons redeemed in the store, do so. Remind those dealers that they may earn a service payment of 2¢ per coupon by sorting and counting their coupons prior to your next call.

It is your responsibility to recommend this plan to all of your customers except those who you believe will be likely to redeem coupons improperly. In such cases do not suggest that the coupons be mailed in; notify those dealers that you personally will arrange for payment on your redemption canvass. At that time you will have the opportunity to discover any evidence of improper handling of coupons and to take any necessary steps to protect the Company's interests.

In preparing your Daily Report, follow these instructions: Show on your Daily Report when you begin and end an advance canvass, and check "Advance Canvass" on the Report daily until regular coverage is resumed or the redemption canvass is begun.

In the brand columns show sales of all brands and sizes on which there will be coupons.

Retain your advance canvass Daily Report copies so that you can arrange to sell the needed additional quantities (through personal call, telephone, letter, or through jobber salesmen) to dealers having insufficient stock of one or more brands.

Jobbers — Explain to your jobbers the work which the Company is doing and enlist their support. Be sure to sell them extra volume of the brands affected so that they will be able to handle the extra demands on their stocks resulting from the campaign.

Particularly during the last two weeks prior to the distribution of the coupons, jobbers should be encouraged to go after business from their customers on the couponed brands. Their salesmen can be supplied with copies of our regular Organizer Sheets. This will not conflict with your advance canvass, and it will help plug up any holes in distribution. Ask your jobber to notify you at once regarding any of your orders for couponed brands which cannot be delivered, so that other arrangements may be made to get stock into those stores. When you deliver orders personally to a jobber, it is advisable to have the orders approved at that time.

Have it understood by jobbers and association headquarters that the Company will

handle the redemption of coupons and that they are not to redeem coupons from dealers.

Chains — You will be instructed by your District Office how to handle the stores of each major chain. Make a special effort to enlist the cooperation of chain store supervisors and managers. Make sure that they are thoroughly familiar with what will be done. They are eager for the extra business that couponing will bring and can do much to make the campaign a success.

If you are responsible for any chain headquarters, follow these instructions:

Whenever possible, arrangements should be made for chain headquarters to send a forced draft to their stores located in the areas to be covered by the field work, preceded by a strong bulletin describing the work and specifying the display support expected.

Notify your District Office of arrangements made which will affect other salesmen, so that they may be guided by these.

Where forced drafts cannot be arranged, try to have headquarters send out a special bulletin to the affected stores, with an order form at the bottom which is to be returned to them so that the quantities specified can be delivered the week before coupons are distributed.

Another effective procedure is to obtain a letter from chain headquarters, on their own letterhead, giving authority to the store managers to order out certain stocks. Show this to each manager and ask him to requisition sufficient quantities of the brands affected. Suggest to him the quantities that he will need and, if possible, get him to place these on his requisition blank then and there.

If the coupon release date is not soon enough to justify this, leave with the manager a Plan Slip showing the quantities to be ordered and the date that applies as a reminder to place the order at a later date. A bulletin from headquarters to the stores, outlining the volume possibilities of the campaign, suggesting displays and paving the way for your call, will help immeasurably.

Tie-in featuring by chains and associations adds considerably to the effectiveness of a field advertising campaign. When one release date applies throughout the chain's territory, the coupon featuring should be included in the main body of the chain's regular ad. When several release dates apply to the chain territory, tie-ins should be arranged by having a special feature added to the regular ad run in the locality affected.

Make sure that the chains you handle know the proper way to submit coupons for redemption.

HELPING THE TRADE RESELL OUR BRANDS

Whatever you do to help the trade resell our brands is part of your selling job because repeat business results for you and for the dealer only when our products find their way into the home and are consumed.

RESALE PRICES

Items Should Be Price-Marked

That items should be plainly marked with their selling prices is an important principle of retailing.

Many stores have their own way of indicating shelf prices. In such stores, it is desirable to see that each of our brands is priced, using for this purpose the store's own numerals or stickers.

Multiple Prices

Point out the advisability of using multiple prices: instead of 7¢, 3 for —¢; instead of 10¢, 3 for —¢; instead of 30¢, 2 for —¢. Such multiple prices help increase the average unit of sale for the dealer because they indicate good value and thus stimulate impulse buying.

SHELF SPACE AND POSITION

Importance of Self-Service Stores

Over seventy-five per cent of the total sales of independent stores are handled by stores that are self-service. Most chain stores are self-service. It is evident, therefore, that a substantial portion of the business our brands enjoy reaches the consumer through self-service stores.

Importance of Shelf Space and Position

In a self-service store the sale of a brand is greatly affected by its location and the amount of shelf space it has.

The following test is reported in the book, Self-Service Food Stores, published by Progressive Grocer.

The outcome of the two-week test:

Eighty per cent more soap was sold from the top shelf than from the bottom shelf, proving: some shelf positions are more desirable than others.

During the first week, forty-five per cent more soap was sold than in the second week, proving: total sales are increased when the best sellers are given preferred position.

The proper use of shelf space

- Increases the sales of the soap department.
- Helps bring about an increase in over-all sales for the store.
- Helps prevent out-of-stock conditions which are costly in terms of over-all sales and consumer goodwill.
- Brings about a decrease in labor costs for restocking shelves.
- Makes shopping easier and more convenient for the consumer.

Many Existing Arrangements Are Unsatisfactory

The trouble with soap sections in many stores is that they have grown haphazardly. Frequently not enough space is given to soap in proportion to its importance in terms of dollar volume and profit. Often the brands within the soap section are arranged helter-skelter with no effort made to allot shelf space in proportion to sales, with the slowest sellers sometimes having the greatest amount of shelf space. The shortening sections are often inadequate or poorly arranged.

Improvements That Should Be Made

You can do a real favor for dealers who operate self-service markets and at the same time help the business on our brands by calling attention to improvements that should be made in shelf space and position for our products.

The steps to be followed in properly arranging a soap section are:

- Determine average weekly turnover by brands and sizes.
- Allot shelf space in ratio to movement. It is of utmost importance that this principle be followed to prevent out-of-stock situations which experience has shown to be costly in terms of loss of business on our brands.
- Group products according to their use: Fine fabric package brands, heavy duty package brands, floating and toilet soaps, and bar laundry soaps.
- Place fastest selling brands first in line of traffic flow.
- Place Giant Economy and Regular sizes together on the shelf. Give the Giant Economy size the "first spot."
- Place Personal Size Ivory in the toilet soap section, not with other Ivory sizes.

In addition to the basic principles just stated, the following ideas find application in well-arranged soap sections:

All soaps and synthetics, both package and bar, should be in one general location. This arrangement speeds traffic and is much more convenient for the consumer.

Dealers operating self-service markets that have old-style shelving consisting of four- or five-shelf fixtures should be encouraged to remove the first and perhaps even the second shelf from the bottom in those sections where large package products will be stocked. It is usually not difficult or costly to do this, and it will help make the household department modern and efficient.

When Regular and Giant Economy packages are placed low and flat, restocking is much easier and faster. In markets handling a large volume of package products, a sizable labor saving can thus be made. In addition to the labor saved in stocking the shelves, there is a further saving in that at no time need package products high on the top shelf be moved forward so that they can be reached by the consumer.

When fine-fabric brands are placed first among the package products, their sale increases. The principle is much like that of placing desserts first in a cafeteria.

In carrying out the above objectives, it is positively not the Company's desire to displace any competitive products, nor to lessen the space that any competitive product merits based on its movement.

Action To Be Taken

In your day-to-day work, you will come across flagrant examples of the misuse of space. Become aware of these. When an improvement from which one or two brands will benefit can be made easily and quickly, try to arrange for this at once.

A complete rearrangement of a soap section takes considerable time and must be handled by the store's own personnel. You can help a store operator plan the rearrangement that should be made, without spending an excessive amount of time, by laying out facings in order to determine the best possible arrangement of the brands on the shelves.

You may also find it helpful to illustrate your proposed arrangement on a shelf layout sheet (DO-8).

While facings are being laid out, strive for desirable shelf space for our brands as justified by their movement. Desirable shelf space is:

- Between hip and arm level. Regular package products stacked on the bottom shelf should come up to this height.
- The first-approach position where there is a distinct traffic flow
- End locations where there is a traffic flow from several directions

Whenever there has been a rearrangement, make sure everyone in the store who has anything to do with restocking the soap section is thoroughly sold on the advantages of the new set-up.

Monday Morning Is Ideal Time

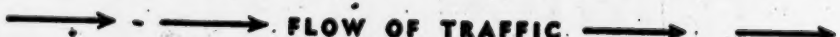
Early Monday morning is the best time to judge the efficiency of a soap section. The shelves will be bare when fast-selling brands do not have enough shelf space—indisputable proof that business was lost on Saturday. Monday morning is also generally the best time to have soap sections rearranged because shelf stock is then at its lowest.

Markets to be Built or Remodeled

In markets to be built or remodeled, the time to get more shelf space and the right kind of shelving for soap is before the new store layout is decided upon. The time to get the right arrangement of the brands on the shelf is when the shelves are first stocked.

Follow-Up on Initial Sales

On the canvass following the one on which an initial sale is made, take the time to make sure that brand has proper shelf space. Often you will find that the sale you made initially is still in an unopened case in the stock room and repeat business for that brand is blocked instead of being helped.

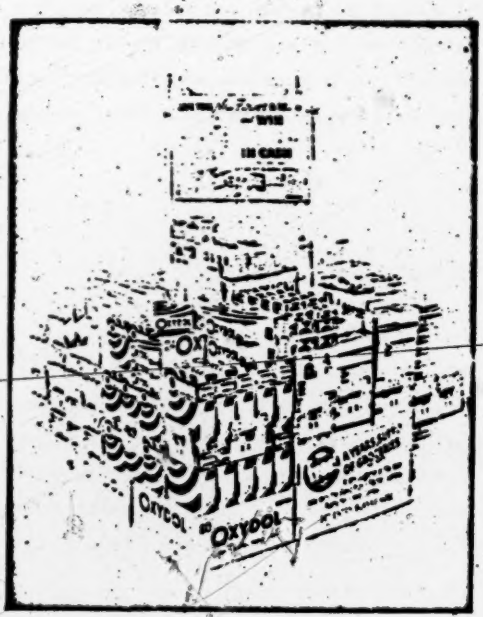


SOAP DEPARTMENT

IN A SELF-SERVICE MARKET, YOUR OBJECTIVE SHOULD BE TO SECURE FOR OUR BRANDS THE SHELF SPACE AND POSITION THEY DESERVE ACCORDING TO MOVEMENT.

DISPLAYS

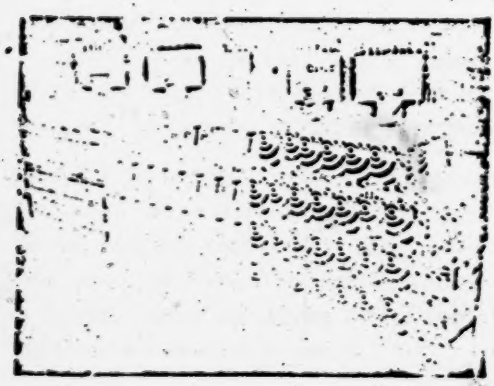
Here are examples of displays which are effective in self-service markets:



Around a pillar



At the beginning of the soap section



A mass floor display

A good display has these characteristics:

It is in a proper location.

It is large enough to command attention.

It is so arranged that it invites self-service.

It shows a price and a reason for buying.

In a self-service store a soap display will be most effective if it is in or near the soap section or the approach to it. A Crisco display should be located close to the shortenings or in a heavy traffic aisle. Sometimes an additional display of Crisco can be obtained in the meat department. In a service store a display of soap or Crisco should be located in a prominent spot, accessible to the customer for self-service. Near the cash register or scales are generally good locations.

Arranging for Displays

When you apend DCM, you are paying for a display service the dealer has agreed to render. If our brands are not on display when you enter the store, or if you are not provided with evidence that they have been on display, then a display must be made before DCM can be paid. It may be necessary for you to assist in making displays, but the dealer or his clerk should bring from the stock room the full cases needed.

Secure the Dealer's Help in Making Displays

If you want the display work to be effective and long-lasting, secure the help of the dealer or his clerk. Most of us do not fully appreciate that which we get for nothing. The dealer and his clerks will value displays which have cost them time and effort, and such displays will be maintained.

An easy way to get the necessary stock for a display is to list the cases needed on a Plan Slip and hand this to the dealer, saying, "If you will have (name of clerk) bring up these cases, I'll help you display them, and then I can pay you —— for this." Sometimes the slip can be turned over directly to a clerk who can be bringing up the stock while you are making your presentation.

Why Our Brands Should Be Displayed

Even without DCM, it would pay the dealer to display our brands. A display helps the dealer in these ways:

It builds profits. There are no items in his store that are more suitable for display than our brands. They are used daily in almost every home and are of interest to every customer on practically every shopping trip.

If the dealer could, it would be profitable for him to say to every customer, "Madam, do you need any soap today?" Many extra sales would be made. The next best thing is having a good, big display where every customer will be sure to see it.

It builds other business. To display our brands at proper prices is to say to Mrs. Consumer, "The prices in this store are right," a subtle and profitable way for him to tell his customers he has good values, not only on our line, but on everything. A dealer who does not advertise has no way of saying this except by display.

It helps create satisfied customers. In quality, each of our brands is unexcelled. A dealer, therefore, can endorse these brands with perfect confidence. He does just this when he displays them.

Other Pointers on Displays

Put emphasis on brands currently being promoted.

Place the greatest display emphasis in the stores where displays will do the most good. Strive for permanent displays.

Encourage the dealer to place our brands on display when they are delivered, without having to lug hundreds of pounds downstairs to the stock room and upstairs from the stock room. This is particularly desirable when orders are delivered just before coupons are released.

Do not take down stock that has been placed on the shelf, for these obvious reasons:

The dealer or his clerk has spent time and effort placing this stock on the shelf.

Usually, not enough stock can be obtained from the shelf to make an effective display.

A sale may be lost when a customer looks for the brand in its usual shelf position and finds it empty.

Whenever you can, get several of our brands on display simultaneously. An ideal combination consists of three of our brands: a bar soap, a fine-fabric package soap, and a heavy-duty package soap.

During housecleaning time, have our soaps mass displayed with other housecleaning items, such as buckets, mops, scrub brushes, window cleaners, and waxes.

Crisco and Fluffo are always desirable items in a display of flour, baking powder, spices, or other cakemaking ingredients.

Discard Out-of-Date Material

Be on the lookout for our outdated and obsolete entry blanks, order blanks, or display material in stores, and discard such material. By doing this, you will be assured of better consumer attention to current promotions.

WINDOW POSTERS

Window posters serve these important purposes:

- They remind a customer entering the store of special offers available inside the store.
- They help the dealer call the attention of passers-by to his specials or special offers, thus attracting new customers to his store.
- They help provide a "circus effect" for our promotions.

Placing Window Posters

Whether or not the dealer wants posters and whether or not they are left up depends to a large extent on what you say to the dealer when you are ready to place them. Show that

you value them. Be positive in your suggestions. You may find it helpful to use this statement: "Joe, here's a knockout poster I can give you. Would you like me to place it in this window or over here?" (You are asking "which," not "whether.")

Place posters so that they appear at the eye level of the passer-by or as close to this as possible.

A trail of posters marks the route an aggressive P&G salesman has followed.

WINDOW DISPLAYS

You should not spend time making window displays, but whenever you can, encourage the dealer or his clerk to make them with our brands. Our packages are colorful, and a solid Procter & Gamble window is attention-arresting. (Crisco and Fluffo must not be placed in windows in the summertime.)

THE DCM PLAN

The Company's DCM Plan (Dealer Cooperative Merchandising) is available to all classes of trade throughout the United States. The purpose of this plan is to cooperate broadly throughout the retailing field in accordance with the capacity of the dealer to provide merchandising service, and to pay in accordance with the schedule for each class of service rendered on our various brands.

There are, broadly, three classes of service for which payment can be made, namely:

Class 1 — Newspaper featuring and store display.

Class 2 — Handbill featuring and store display.

Class 3 — Store display alone.

Class 1 — The first class of merchandising cooperation applies to newspaper promotion only, based on a minimum schedule of newspaper featuring, supplemented by the usual other auxiliaries of special sales promotion, plus the regular maintenance of prominent displays of brands purchased, in ample supply, readily accessible to the consumer, and in location and quantity at least comparable to competitive products.

Each feature must be equal in space and duration to that ordinarily used by the merchandiser for major feature sales but not less than one column inch per brand, and cannot be combined (priced jointly) with a competitive item.

The Cooperative Merchandising Agreement, Form DO-50, clearly defines the merchandising service required by brands and the amount per case paid by brands for full schedule performance of Class 1 service. If, for any reason, the merchandiser does not meet the full requirements on any brand, only the proportional part of the full period payment can be made.

All payments will be based on whole (statistical) cases in accordance with our statistical record.

Class 2 — The second class of merchandising cooperation applies to direct consumer promotion such as printed handbills, radio, direct mail, or newspaper featuring which does not meet Class 1 requirements, supplemented by the usual other auxiliaries of special sales promotion, plus the regular maintenance of prominent displays of the brands purchased, in ample supply, readily accessible to the consumer, and in location and quantity at least comparable to competitive products.

The Cooperative Merchandising Agreement, Form DO-50, is also used for Class 2 service. For Class 2 service, the payment is 9¢ per statistical case on the specified brands. The same schedule of brand feature requirements will apply under Class 2 as under Class 1. If the merchandiser does not meet the full, specified requirements on any brand, only the proportional part of the full period payment can be made.

While the Class 2 plan does not specify the size of space in handbills required to constitute a feature, the space must qualify as prominent and be commensurate with that used for other feature items. Our brand must not be combined (priced jointly) with any competitive item.

Class 3 — The third class of merchandising cooperation applies to display only and consists of the regular maintenance of prominent displays of brands purchased, in ample supply, readily accessible to the consumer, in location and quantity at least comparable to competitive products.

The Cooperative Merchandising Agreement on the reverse side of the white copy of the Order Form is used for Class 3 service.

The rate of payment is 6¢ per statistical case for the specified brands, with a minimum payment of 40¢ per delivery. It is necessary to establish this minimum, as going below this amount would be too costly to apply and check. There is no payment on deliveries of less than seven cases.

Class 3 merchandisers who want to provide some direct consumer promotion without contracting for any specific period of time may be paid on a trip-to-trip basis at the Class 2 rate on brands featured in such direct consumer promotion. The Class 3 agreement form makes provisions to handle such Class 2 service rendered on a trip-to-trip basis.

* * * * *

The preceding three plans will apply to orders delivered direct by the Company and to orders written by our representatives but delivered from a jobber or association warehouse. Where merchandising contracts are made with retail outlets on purchases for other than direct shipment, delivery of the goods must be verified.

DCM payments will be made to all classes of retail outlets meeting the merchandising requirements, viz., chain stores, cooperative associations, voluntary chains, individual retailers, department stores, drug stores, etc. For a cooperative association or voluntary chain store to qualify for a contract, its member stores must be identified by the insignia of the group and must participate in and support the regular merchandising service of headquarters.

Accordingly, when the agreement is signed, headquarters must give us a signed statement showing the percentage of their volume that goes to prominently identified member stores who tie-up regularly with headquarters' merchandising by means of floor, counter, or window displays, store posters, etc.

If, at the time payment is due, there has been an appreciable change in the percentage figure, it is the responsibility of the merchandiser to give us a revised statement indicating the new percentage to apply for the period. At least once each year we must verify the accuracy of this percentage figure by making a sufficient number of store checks to be sure we are getting the store tie-up for which payment is made.

If the headquarters of an association or voluntary chain is operating under a DCM contract, and Class 1, 2, or 3 DCM is paid to individual members of the association on purchases made from our salesman for delivery by their headquarters, such payments will be deducted from the gross amount earned by the headquarters under its DCM contract.

Performance under all merchandising contracts must be substantiated either through features checked at the District Office or the actual newspaper or handbill features run, and a statement of displays made.

All features are to be of such character as not to be detrimental to the Company's business.

Under present laws, the dealer is mutually liable and cannot accept payment except for the service actually rendered. It is therefore necessary that the application of the plan be handled clearly with each outlet and that only partial payment be made in every instance where only partial service is rendered. To secure the maximum payment in each classification of service, the dealer must render the full merchandising service required.

ARRANGING FOR CLASS 3 DCM

Whenever a Class 3 DCM arrangement is made with a dealer, the Cooperative Merchandising Agreement, which appears on the reverse side of the white copy of the Order Form, must be signed by both you and the dealer in order for the agreement to be valid.

On orders sold by you for delivery by a jobber or an association headquarters, on which Class 3 DCM is due, prepare for DCM purposes a carbon copy of the order on a white Order Form. The agreement on the reverse side of this must be signed, and you must fill in the name of the jobber or association headquarters delivering the order. If the dealer is a member of a cooperative association, or voluntary chain, show the name of his organization and the sponsoring jobber (if it is a voluntary chain).

All Class 3 Cooperative Merchandising Agreement Forms are to be sent to your District Office.

Computation of Payment

The District Office will compute and enter the amount of DCM due for Regular Display (Part A of the form). Then the Cooperative Merchandising Agreement will be returned to you to serve as a payment voucher.

Filing the Vouchers

To facilitate handling, Class 3 DCM vouchers should be filed alphabetically when received and pulled at the time your planning is done. If you handle many vouchers, obtain an alphabetical file from the District Office; otherwise an 8½" x 11" envelope should suffice.

Making Payment

Before making payment on your next call, be sure that the dealer has fulfilled his part of the agreement and that full value has been obtained for the money you pay. Do not make a DCM payment when the dealer has failed to render the required service. It is the responsibility of the dealer to make and maintain the displays required. You may assist in arranging the display where circumstances justify, but this work should be done primarily by the dealer, and he or his clerks should always bring the goods to the display spot.

Amounts of $5.00 or less should be paid in cash. When the amount is more than $5.00, send the payment voucher to your District Office for payment by check. Cross out, on the lower part of the form, the method of payment not desired.

Obtain the merchandiser's signature to the statement that the goods have been delivered and that the contract has been fulfilled; sign this statement yourself.

Attach the payment voucher to your Daily Report as a receipt for the cash payment you made or send it to your District Office as a request for a check to be sent when more than $5.00 is due.

If the goods covered by the payment were delivered by a jobber or association headquarters, check their invoice to make sure delivery was made as ordered, and record the date of the invoice in the space provided for this on the payment voucher. Mark the jobber's invoice "DCM paid" and sign your name.

Class 3 contracts on which more than $5.00 is due and which cover orders delivered by a jobber or an association headquarters must be substantiated by their invoices. Attach these invoices to the payment voucher when returning it to your District Office. The invoices will be returned to the dealer stamped "DCM paid."

Adjusting DCM Due When Orders Sold Through a Jobber Are Not Delivered as Written — If at any time the assortment received from a jobber or association headquarters is less than the assortment sold by you, it is your responsibility to decrease the amount of Class 3 DCM due. If, for example, you sold a 10-case order to a dealer for delivery by a jobber and the dealer received only 5 cases, no Class 3 DCM would be due on that order, inasmuch as the amount involved does not equal the required 40¢ minimum for Regular Display. Or, if 10 cases were ordered and only 8 cases were delivered, you must reduce the payment by 12 cents.

The amount paid on a Class 3 DCM agreement must never be larger for any brand or size than the amount due on the order written by you. If, for example, the dealer ordered 10 cases from you for shipment by a jobber and later increased this order to 12 cases, DCM would be due only on the part of the order sold by you, 10 cases.

Failure to Perform Required Display Service

If a dealer fails to perform the required display service, give him until your next call to fulfill the requirements. If the service has not been performed by the end of the extended period, mark the Class 3 DCM payment voucher "VOID" and return it to your District Office. Class 3 DCM contracts expire ninety days after shipment of the goods and are at that time considered void unless payment was not made because of your failure to call on the dealer or because the dealer has been granted additional time to render the required service.

Cancelled or Refused Orders

If an order for which you have a Class 3 DCM payment voucher was cancelled or refused, mark the voucher "VOID" and return it to your District Office at once.

TRIP-TO-TRIP PAYMENT OF CLASS 2 DCM

Part B of the Class 3 Cooperative Merchandising Agreement Form enables you to pay a dealer an additional 3¢ per case (increasing the payment per case from 6¢ to 9¢) for those brands on the order that were featured in newspapers or in handbills or through other direct consumer promotion, in addition to Regular Display.

When the order is placed, handle the Cooperative Merchandising Agreement exactly as you do for Regular Display. The District Office will compute and enter the amount of DCM due for Regular Display and the form will be returned to you to serve as a payment voucher.

On your next trip, if you find that in addition to Regular Display, the dealer has given certain of our brands featuring in accordance with Part B of the Cooperative Merchandising Agreement, proceed as follows:

Place check marks on the form (now the payment voucher) beside the names of the brands so featured.

Determine the number of cases on the order of the brands featured and compute the additional amount of DCM due at 3¢ per statistical case (1½¢ for each half case, 4½¢ for Spic and Span 12's). Add this to the amount due for Regular Display (previously computed by the District Office).

Attach proof of featuring to the payment voucher when you send it to the District Office.

In all other respects — signature required, method of payment, proof of delivery of jobber or association orders, and cancellations — handle payment vouchers on which Part B applies exactly as you handle vouchers that cover only Regular Display.

It has been found that this trip-to-trip Class 2 DCM plan is preferred by dealers whose potential annual DCM earnings are relatively small. Such dealers generally handle their own advertising, and the trip-to-trip plan eliminates the necessity for their keeping any records except the actual proof of ads run since the salesman's last trip. Providing planned ads covering the brands purchased on every trip and paying for these ads on the next trip not only saves detail, but enables the dealer to fulfill the requirements and earn more DCM money.

CLASS 1 AND 2 DCM

Cooperative Merchandising Agreement, Form DO-50

This agreement form is used for all merchandisers rendering service under our Class 1 or Class 2 plan and is to be filled out in triplicate. Send the original to the District Office, leave the duplicate with the merchandiser at the time the contract is made, and retain the third copy for follow-up purposes.

Length of Contract

It is desirable that all contracts under Class 1 or Class 2 be on an annual calendar year basis with the understanding that we are willing to pay the merchandiser at the end of each four-month period, based on performance and shipments to date, less any previous "interim" payments.

Contracts for a period of four months are permissible, where necessary, with requirements as to number of features proportional to the annual requirement for each brand.

Strive to have the requirements of all annual DCM contracts fulfilled by November 30 or earlier, if possible.

Make contracts for the following year on your November-December canvass upon authorization by your District Office, and arrange early January ads at that time.

Schedule of Featuring

With all accounts rendering merchandising service under our Class 1 or Class 2 plan, a definite schedule of features to be run should be established as far in advance as possible.

Making Payment

Whenever an "interim" payment is to be made on a Class 1 or Class 2 agreement, which usually is every four months, the request for this, addressed to the District Office, should be accompanied by:

1. **Proof of the merchandising rendered for which payment is to be made.** It is the merchandiser's responsibility to submit newspaper tear sheets, handbills, post cards, etc., as proof of the advertising our brands received. However, for accounts for which the District Office is able to check newspaper advertising, tear sheets need not be submitted because DCM will be paid on the basis of the Report of Advertising prepared in the District Office.

2. **Proof of delivery of orders sold by you for shipment by a jobber or association headquarters.** A merchandiser operating under a DO-50 contract, who buys other than direct, should therefore be instructed to retain his copy of every order written by you and to attach to this the jobber's or the association's invoice substantiating delivery. Copies of your orders together with these invoices must be sent to the District Office. The District Office will always return all such invoices to the merchandiser; they will be stamped "DCM paid."

The reverse side of Form DO-50 is filled out by the District Office for every contract account and sent to you at the end of each payment period.

A check covering payment for the amount due to date is sent to the merchandiser.

Before the final payment of the year is made, you must obtain the merchandiser's signature in the space provided on the front of the agreement form certifying that the contract has been fulfilled and that payment is to be made. This signature can be secured either on the dealer's copy of the agreement form or, if that is not available, on your copy of the form.

Media that Qualify

A newspaper must have general paid circulation, usually daily, and be bought by the public to keep posted on current events, local, national, and world-wide. In some areas (principally rural) weekly papers having wide local circulation can be placed in the newspaper class. However, in the large cities and suburban metropolitan sections there are many neighborhood or local papers, such as shopping news and weekly publications of the magazine type, which must not be included in the newspaper class but can be considered in the handbill classification.

A handbill, in order to qualify as cooperation under Class 2 service, means a printed handbill, made by a printing press, and does not include multigraphed, mimeographed, and other types of handbill reproduction. These printed handbills must be distributed direct to homes. Store distribution does not qualify.

Direct mail advertising pieces, such as post cards or bulletins mailed to homes, qualify for Class 2 payments if the mailing covers at least 80 per cent of the dealer's customers.

Spacing Features

Features should be spaced as evenly as possible throughout the year. No more than four features on any brand (three features on Lava and Kirk's Hardwater Castile) may be counted towards contract performance in any one of the successive four-month periods of the contract, unless it was not possible for the merchandiser to run the required number of features in previous four-month periods because supplies were not available from the Company. In such cases, if the merchandiser wants to make up shortages against his contract prior to its expiration, it will be permissible for him to do so, provided the features are not crowded into so short a period as to lose their effectiveness.

Not more than one feature can qualify during any one week as performance toward the required number of features on any brand.

Ivory and Camay

Ivory Large, Ivory Medium, Personal Size Ivory, Camay Bath, and Camay Regular are considered separate brands and the requirements of one column inch for a Class 1 feature applies to each size. Therefore, these brands must be featured separately in a column inch or more.

Brands Other Than Ivory and Camay

For brands other than Camay or Ivory, all sizes may be included in the same column inch.

When two or more sizes are prominent sellers, as in the case of Dreft, Oxydol, Duz, Tide, Spic and Span, and Crisco, all sizes should be included in at least 75 per cent of the features. If one size of a brand strongly predominates and the other is of minor volume, it is permissible to base

payment on the total purchases of the brand, provided the volume size is included in all features and the minor size is included in at least 25 per cent of the features.

The Company feels this is a matter that rests in the hands of its field organization, and our men should be able to get the cooperation of merchandising customers in featuring two or more sizes of these brands in view of the fact that all sizes of a brand can be included in the same column-inch space.

Miscellaneous Points Regarding Newspaper Featuring

Newspaper features of our brands must be included in the main advertisement of the merchandiser. Features of our brands by such accounts in so-called "strip ads" do not qualify for payment, even though they might be on the same page or adjacent to the main advertisement.

When an advertiser uses a masthead promoting a "Procter & Gamble Sale" and features our individual brands immediately below the masthead, the space devoted to the masthead is to be apportioned equally among the brands featured and added in to determine the linage given to each brand. When our brands and competitive brands are featured beneath the same masthead, the space devoted to the masthead is to be disregarded. Only the linage actually given each of our brands will count.

The newspaper advertiser who uses the full one column inch space in key point newspapers, but also runs supplementary smaller space newspaper featuring during the same week in smaller towns within the circulation area of the key point, may use proportionately less space in these small town papers in featuring our brands.

The newspaper advertiser who features the same sale in a given paper during several days of the week may qualify for Class 1 payment by featuring our brand in one column inch on the regular grocery featuring day and giving the required store tie-up. It is to be hoped, of course, that the merchandiser will see his way clear to include our brands in all of his featuring during the week, as in so doing he will increase his volume and total payments.

Jobbers Providing Only Window Posters

The plan does not provide for the expenditure of cooperative merchandising money with jobbers who put out a window poster service and nothing else.

Contracts with Individual Members of Associations

A merchandising contract with an individual member of an association (whether he buys direct or purchases from you for delivery by his headquarters) can cover only the merchandising service which he performs independently from his headquarters. In other words, to earn the Class 1 rate, the dealer must be a newspaper advertiser under his own name. To earn Class 2, he must put out handbills under his own name independent of his headquarters.

Dealers Selling to Other Than Retail Accounts

Our merchandising payments cannot include goods sold by the merchandiser to an account of another class that does not qualify for the merchandising service. For example, if a merchandiser operates a joint retail-wholesale business, he cannot be paid DCM on that part of his business which is sold at wholesale. It would be illegal for us to pay merchandising money on such volume and illegal for the merchandiser to accept such payment.

Radio Advertisers

Radio advertisers must submit copy of their commercials, showing date and station, as proof of performance.

Mail and Telephone Orders

DCM is payable on mail or telephone orders provided the necessary merchandising support is obtained from the dealer.

Deductions From Invoices

No deductions for cooperative merchandising are to be made from invoices.

No Exceptions Are To Be Made

All merchandising contracts are to be arranged for on the Company's agreement form, and no exceptions are to be made to our standard form by writing changes into the contract.

If any questions arise concerning DCM, which you cannot clearly answer from the instructions in this Manual, get in touch with your Unit Manager or District Office.

When You Spend DCM, You Are the Buyer

Even without DCM our brands would be featured; with DCM, it is your responsibility to make sure that full value is received. All requirements of the DCM Plan are minimum requirements both as to space and number of features, and it should be your objective to get more space and a greater number of features for every one of our brands.

When you discuss DCM with your trade, stress what the DCM payments amount to in total dollars and cents for a given period, based on the volume of business of each of our brands. This is far more meaningful than the rate per case.

Be on the lookout constantly for new advertisers who can feature our brands. Strive to have at least one or two of our brands in every grocery trade advertisement.

BUILDING GOODWILL

When you have a dealer's goodwill you have his interest and confidence; your entire relationship is more pleasant, and with less effort you get better results in sales and merchandising; your brands will be favored when a decision is to be made as to what should be displayed, which brands are to have preferred shelf space, or which brands are to be featured.

Goodwill cannot be bought. It must be earned. The principles on which it is built are simple.

• The dealer must have confidence in you. He must feel that you know your business; that you are acquainted with some of the problems of his business; and above all, that he can depend on what you tell him. Never promise more than you can fulfill; live up to every promise made.

• The dealer must be aware of the advantages of handling our line. The requisites of a brand or a product that a dealer should push are:

1. It should fill a basic need.
2. Its quality should be right, so that it can be recommended without reservation.
3. It should represent good value for the consumer.
4. It should be easy and inexpensive to handle.
5. It should sell well.
6. It should not require too large an investment.
7. It should show a profit.
8. It should bring repeat business.

Our brands meet every one of these eight requisites, and in addition, they can be used to attract business for other items. But it is easy to take these things for granted. The dealer often fails to realize how desirable and how profitable is his distributorship of the Procter & Gamble line. It is for this reason that the advantages our brands provide must be repeated again and again.

With every buyer, direct or indirect, wholesale or retail, these points should be stressed at every opportunity:

Our brands fill a basic need. They can always be recommended; their quality is guaranteed unconditionally. Furthermore, they are priced right so that they represent the greatest value at the lowest possible price.

Our brands are pre-sold. The Company's extensive advertising insures turnover. Our brands are not shelf-warmers. Advertising sends customers to the stores for our brands; it is only necessary to show them to sell them.

Our brands are profitable; they have a rapid turnover; and because they are non-perishable and easy to handle, they have a lower handling cost than most items.

You call on all dealers regularly and help speed up the movement of our brands by providing merchandising ideas and material.

Every dealer has an opportunity to earn DCM in accordance with the service he is able to render.

Goodwill depends on making your customers aware of the importance of our brands and getting them to understand the fairness of our basic selling policies.

Here are a few other suggestions for building goodwill.

- Do not let failure to sell disturb your relationship with a dealer. You will, of course, try hard to get the order, but if you fail, leave the dealer with the feeling that you will be glad to see him on your next trip and that you and he will then be able to do business.

- Do not slight a clerk. In his present capacity he may be able to help the sale of our brands, and at some future time he may be the owner of the business.

- Do not make uncomplimentary remarks about a competitor or his products. This does not mean that you should refrain from calling attention to the advantages and superiority of our brands.

- At every opportunity, tell your trade about the Company's personnel policies, such as guaranteed employment and profit sharing. Make it clear that lower manufacturing costs; lower sales costs; superior buying; advertising power; and, above all, loyal personnel have made the Company a leader in the soap and shortening industry.

- In every situation, represent the Company faithfully, standing squarely for all of its policies and ideals. Reflect your belief in your Company.

ghtly Bound

INTERDEPARTMENTAL CORRESPONDENCE

THE PROCTER & GAMBLE COMPANIES

Divisions
Districts

DATE Sept 1957

CSM PROGRAM

Commission's Exhibit No. 21A-B
Procter memo on CSM program dated
September 1957

Our CSM program inaugurated in January of this year has resulted in a marked improvement in the effectiveness of our work with this most important segment of our trade.

To provide an additional stimulus to the program, and to establish minimum requirements for classifying soap and detergent departments as being satisfactory, we are attaching a CSM booklet which is to be used as a basis for discussion with the retail salesman by his Unit or District Manager. It is essential that each salesman thoroughly understand that —

1. While CSM's represent but ____% of the District's outlets, they control ____% of the volume (use figures applicable to your District).

2. Effective execution of our CSM program can produce substantial extra volume and directly affect his Added Compensation earnings.

3. Each man in conjunction with his Unit Manager must accept the responsibility for the proper administration of this program with the CSM's in his section.

To be effective, adequate time must be allotted to this work. It is not to be administered on a "one shot" or "hit or miss" basis, but as a continuing program of developing satisfactory relations with CSM personnel and their management which will result in attaining our objectives as outlined.

A copy of the booklet is provided for you and each of your Unit Managers. The booklets are not to be shown to the trade. They are to be used solely for training purposes within our own organization. Copies are not to be left with retail salesmen. Each booklet is numbered and it is the responsibility of the District and Unit Manager to be certain that they are properly handled.

Under separate cover we are sending you mystic dashboard stickers imprinted with our five basic CSM objectives. At the conclusion of the discussion with each salesman, a sticker should be presented to him. The clamp affixed to the stickers will serve as a convenient place to keep the salesman's route list for the day and other papers. The stickers will also become a permanent reminder to the salesman of the objectives and procedures of our CSM program and its importance to the Company and himself

83X

ABC:egm

FEDERAL TRADE COMMISSION
DOCKET NO. 8901 EXHIBIT NO. 21-B
IN THE MATTER OF The Procter & Gamble Company
DATE 12/18/57 WITNESS
ACE REPORTING CO., Official Reporters

chain supermarket retail operation

FEDERAL TRADE COMMISSION
DOCKET NO. 6961
IN THE MATTER OF The Procter & Gamble Company
DATE 12/18/57 WITNESS
ACME REPORTING CO., Official Reporters
By

To implement a more effective retail operation in CSM's the following are the five basic objectives of our program and the procedure for achieving these objectives:

objective	procedure
1. Perfect Distribution	a. Determine brands or sizes not authorized and indicate by placing an X in distribution column of Call Book Sheet. b. If authorized item not stocked, make sales presentation. c. If item not authorized, specific instructions for sales presentation may be assigned by Unit or District Manager.
2. Prevent out of Stock Conditions	a. If "out" on shelf, item to be restocked, when practical, before leaving store. b. If "out" in store, report condition to proper individual, arrange for immediate shipment, and effect adequate future ordering. c. If "out" in warehouse, report to District Office. (as per DO 269)
3. Enlist Merchandising Support	**a. Shelf Space and Position** 1. Group products into departments—package, liquid, toilet soap. 2. Allot space in ratio to sales where practical. 3. Group products according to use. 4. Group all sizes of a brand together, where practical. Exception noted on page 2. **b. Promotion Tie-in**—Sell promotions to proper CSM personnel to secure: 1. Volume orders of special and regular packs. 2. Supplemental displays. 3. Use of promotional display pieces.
4. Determine Shelf Price Relationship to Headquarters' Instructions	a. Record current authorized shelf prices for each chain organization on Call Book Sheet in accordance with District instructions. b. Call discrepancies to attention of proper CSM personnel.
5. Report Pertinent Data to Company	Follow instructions (DO 269) in regard to use of: a. CSM Call Book and Call Book Sheets DO-91C and DO-91SC. b. Daily Report DO-78.

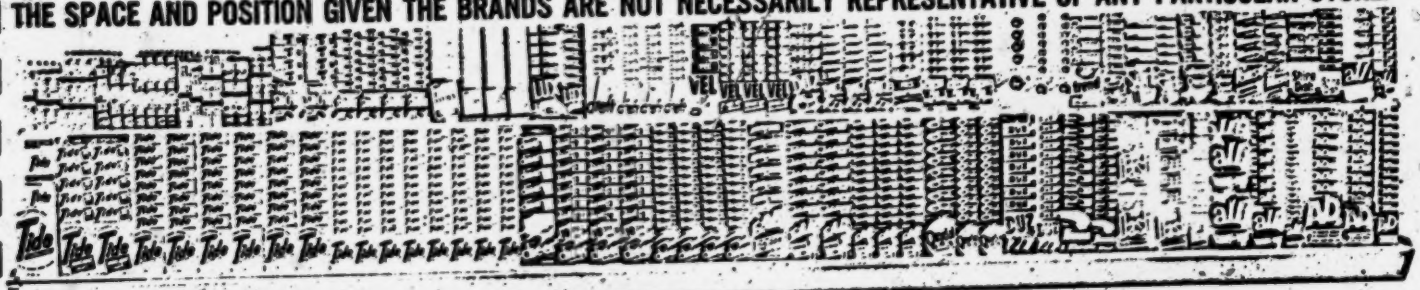
classification of soap and detergent depts.

In order to provide uniform standards, outlined below are minimum requirements which must be met if a soap and detergent department is to be classified as S (satisfactory). Also covered are certain arrangements and space allocations which are regarded as US or UA (unsatisfactory).

Minimum Requirements for S (Satisfactory)	U (Unsatisfactory)
ARRANGEMENT	
1. Separate department for Package, Liquid, Toilet Soap.	1. Package, Liquid, Toilet Soap *not* separated.
2. Within each department—All sizes of each Company brand together. Exception: PSI with Toilet Soap. Notes: 60's need not be placed with other sizes same brand. In stores that group low suds 24's separate from other sizes, Dash 24's may be either next to other sizes of Dash or with low suds 24's. 2's need not be placed with other sizes of that brand providing they are assigned permanent space in or adjacent to the soap department.	2. Within each department—All sizes of Company brands *not* together. (See exception and notes to the left).
3. Package Department Products grouped according to use—heavy duty, light duty, low suds. Arrangement may be considered satisfactory when products are not grouped according to use if to do so would require a major rearrangement with no other benefits resulting.	3. Package Department not separated into heavy duty, light duty, and low suds when minor rearrangement would accomplish this.
SPACE ALL DEPARTMENTS	
4. Space allocated in ratio to sales as nearly as practical.	4. Slower selling brands with greater shelf capacity than larger selling brands. or Slower selling brands with more than minimum shelf capacity when space for larger selling brands is inadequate.

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THE FOLLOWING PHOTOGRAPHS AND EXPLANATIONS ILLUSTRATE THE PRINCIPLES OF PROPER SHELF ARRANGEMENT. THE SPACE AND POSITION GIVEN THE BRANDS ARE NOT NECESSARILY REPRESENTATIVE OF ANY PARTICULAR STORE.

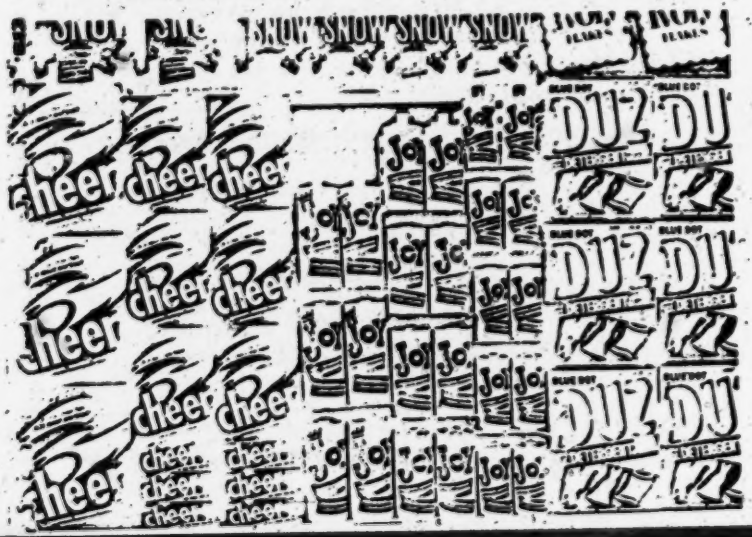


SATISFACTORY ARRANGEMENT AND SPACE, 30 FOOT, SOAP AND DETERGENT DEPARTMENT

This arrangement has (1) separate departments for package soap and liquids. (2) Within each department all sizes of each Company brand are together. (3) In the package department the products are grouped according to use—heavy duty, light duty, low suds.
The space is allocated in ratio to sales as nearly as practical.

REPORT:

DEPARTMENTS	
PKG.	LIQ.
S	S

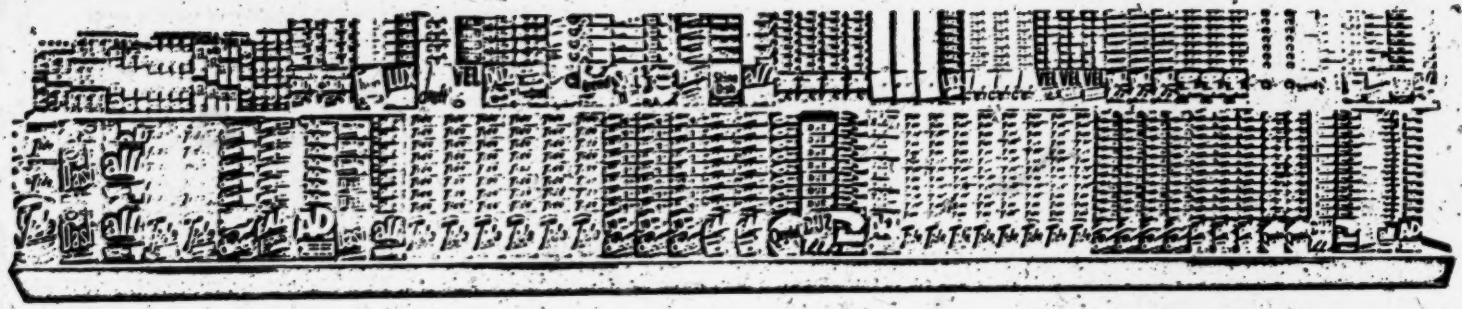


1 UNSATISFACTORY ARRANGEMENT — PACKAGE, LIQUID, TOILET SOAP NOT SEPARATED

This arrangement has a liquid placed in the package department. This prevents the arrangement from meeting our minimum requirement for S arrangement as there is no completely segregated liquid department.

REPORT:

DEPARTMENTS	
PKG.	LIQ.
UA	UA

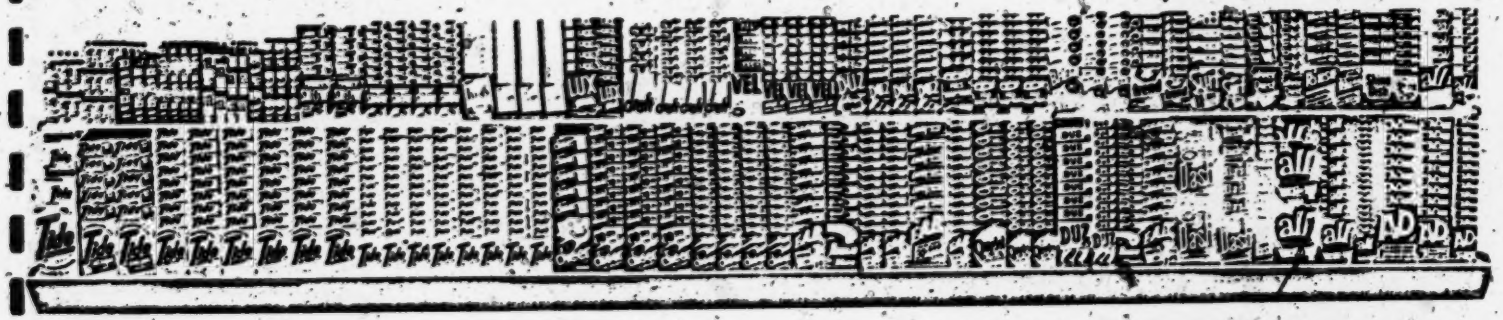


2 UNSATISFACTORY ARRANGEMENT — WITHIN EACH DEPARTMENT ALL SIZES OF COMPANY BRANDS NOT TOGETHER

This arrangement has sizes of package soaps grouped together.

REPORT:

DEPARTMENTS	
PKG.	LIQ.
UA	S

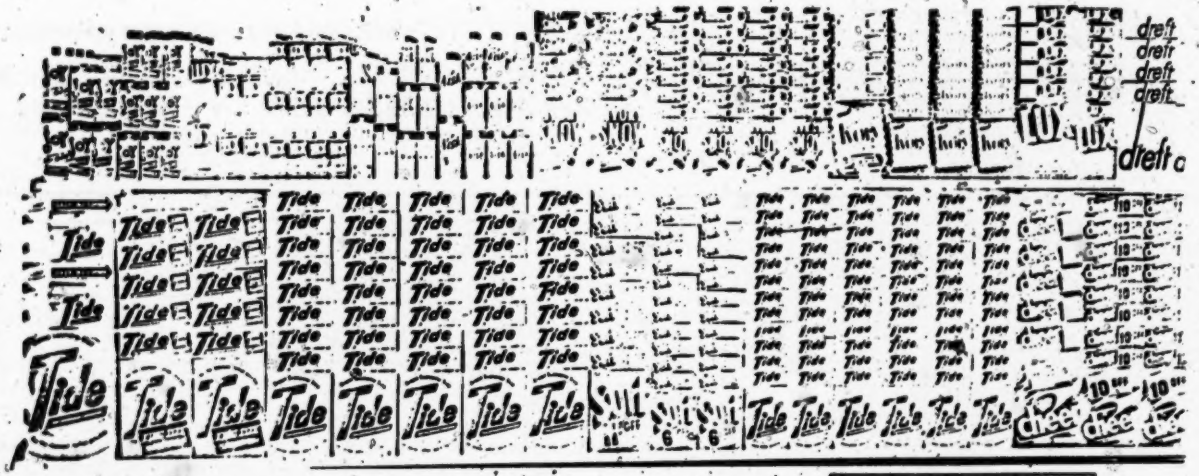


2a SATISFACTORY ARRANGEMENT — ALL SIZES OF COMPETITIVE BRANDS NOT TOGETHER

This arrangement has all sizes of Procter & Gamble brands together.

REPORT:

DEPARTMENTS	
PKG.	LIQ.
S	S

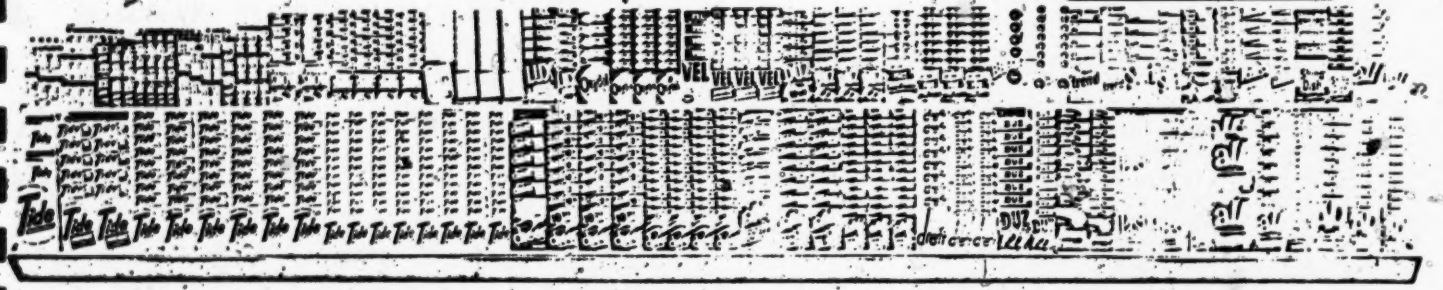


2b UNSATISFACTORY ARRANGEMENT — WITHIN EACH DEPARTMENT ALL SIZES OF COMPANY BRANDS NOT TOGETHER

This arrangement has two sizes of a Company brand split by another brand.

REPORT:

DEPARTMENTS	
PKG.	LIQ.
UA	S

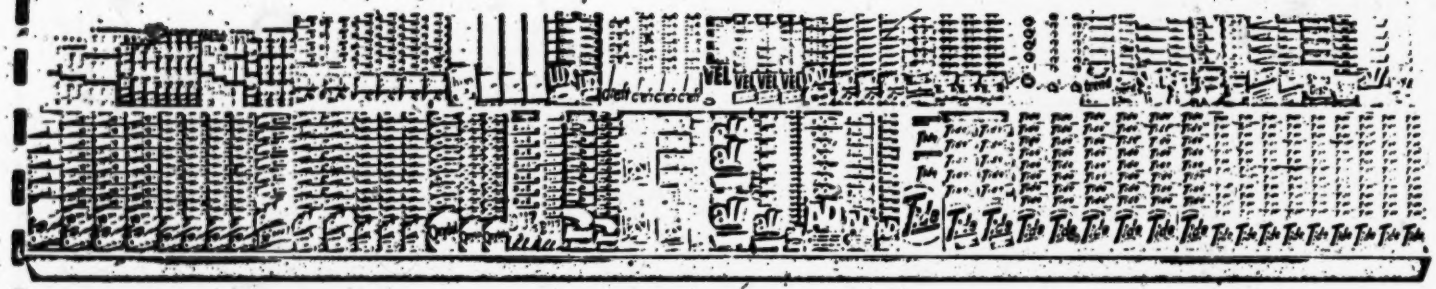


3 UNSATISFACTORY ARRANGEMENT — PACKAGE DEPARTMENT NOT SEPARATED INTO HEAVY DUTY, LIGHT DUTY, AND LOW SUDS WHEN MINOR REARRANGEMENT WOULD ACCOMPLISH THIS . . .

Dreft is in the heavy duty; Oxydol with light duties. To correct we merely switch Dreft with Oxydol.

REPORT:

DEPARTMENTS	
PKG.	LIQ.
UA	S



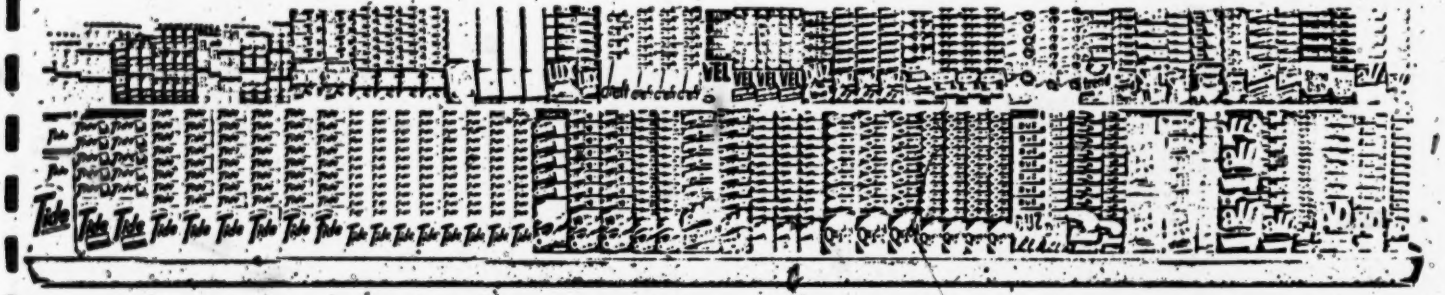
3a SATISFACTORY ARRANGEMENT — PACKAGE DEPARTMENT NOT SEPARATED INTO HEAVY DUTY, LIGHT DUTY, AND LOW SUDS BUT TO DO SO WOULD REQUIRE A MAJOR REARRANGEMENT WITH NO OTHER BENEFITS RESULTING

This arrangement has (1) a separate department for package soap and liquid; (2) within each department all sizes of each Company brand are together; (3) within the package department products are grouped according to use—EXCEPT TIDE IS NOT IN THE HEAVY DUTY SECTION. Space is allocated in ratio to sales as nearly as practical.

REPORT:

DEPARTMENTS	
PKG.	LIQ.
S	S

X48

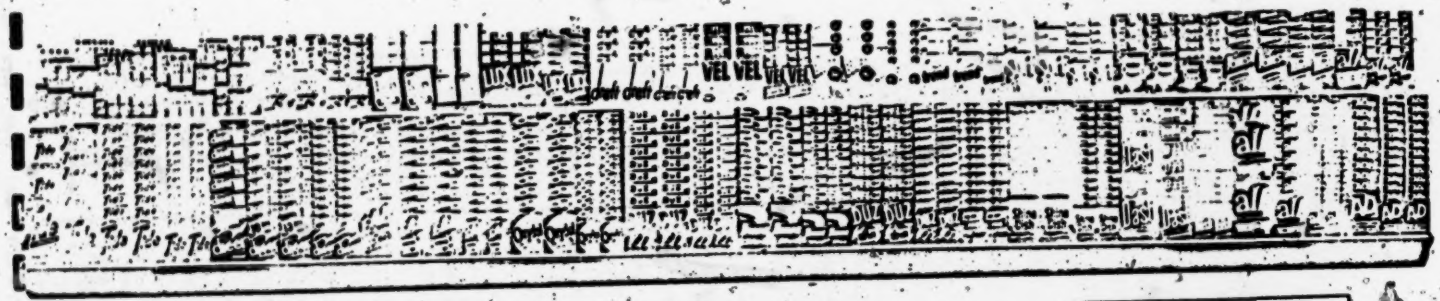


4 UNSATISFACTORY SPACE — SLOWER SELLING BRANDS WITH GREATER CAPACITY THAN LARGER SELLING BRANDS

Assume this to be an area where Cheer has a substantially greater percentage of the market than Oxydol. Then this is unsatisfactory space as Cheer has only 2 rows of the 10's to Oxydol's 3 rows and Cheer has only 2 rows of 24's to Oxydol's 4 rows.

REPORT:

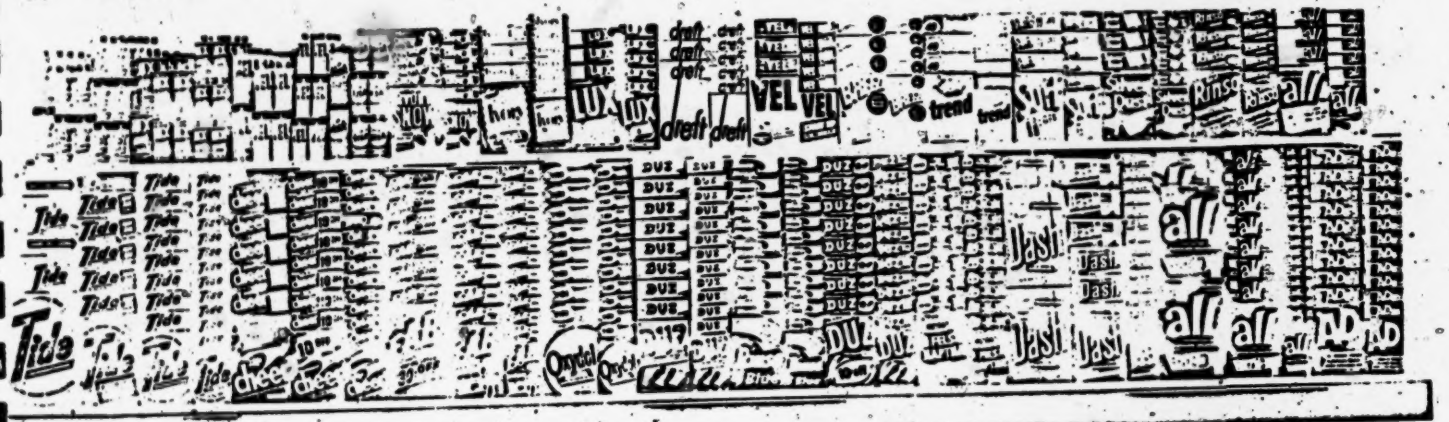
DEPARTMENTS	
PKG.	LIQ.
US	S



4a **UNSATISFACTORY SPACE — SLOWER SELLING BRANDS WITH MORE THAN MINIMUM SHELF CAPACITY WHEN SPACE FOR LARGER SELLING BRANDS IS INADEQUATE**

This arrangement has two rows of 10's and 24's of each brand.

REPORT:	DEPARTMENTS	
	PKG.	LIQ.
	US	S



SATISFACTORY ARRANGEMENT AND SPACE

An 18' section with one facing per size of each package brand. This is satisfactory provided that additional space, if needed, cannot be secured by salesman.

REPORT:	DEPARTMENTS	
	PKG.	LIQ.
	S	S

Commission's Exhibit No. 27
Agreement dated May 28, 1957 between Clorox Chemical Co. and The Procter & Gamble Company

2(a)

AGREEMENT

AGREEMENT dated May 28, 1957.

CLOROX CHEMICAL CO., a Delaware corporation, hereinafter called the "Company" or "Clorox," and other parties who are signatory hereto, and THE PROCTER & GAMBLE COMPANY, an Ohio corporation, hereinafter called the "Buyer," agree as follows with respect to the exchange by the Company of substantially all of the assets, business and good will of the Company which is engaged in manufacturing, distributing and selling bleaches.

1. Exchange of Assets. Pursuant to and in accordance with the Plan of Reorganization, the Company agrees to transfer and deliver to the Buyer in exchange for the consideration herein provided, substantially all of the Company's then existing assets and business as a going concern, including, without limitation, all of the Company's good will and all rights to the use of the name Clorox (or any variant thereof). The assets so to be exchanged and delivered shall consist of those owned by the Company on the closing date; and such transfer and delivery shall be made free and clear of all liabilities, obligations, liens and encumbrances except only those liabilities and obligations which are to be assumed by the Buyer as hereinafter provided and subject to other exceptions hereinafter specified.

Subject to the terms and conditions of this Agreement and in reliance on the representations and warranties of the Company contained herein, the Buyer will exchange for said assets and business and in full consideration therefor will cause the issue and delivery to the Company of 614,928 shares of common stock of The Procter & Gamble Company, par value $2. per share which shall be fully paid and non-assessable (computed on a basis of 8-1/2 Procter & Gamble shares for each 10 shares of Clorox issued and outstanding on April 22, 1957) and which shall be listed on the New York Stock Exchange.

Clorox represents that on April 22, 1957, it had outstanding stock options to cover the issuance of not to exceed 29,000 shares of Clorox stock of which 22,500 shares are issuable at $28.75 per share and 6,500 are issuable at $29.50 per share. If at the time of closing, any of the said options on 29,000 shares of Clorox stock shall have been exercised and the option price paid, the number of shares to be delivered by Buyer shall be increased by 8-1/2 shares for each 10 shares of Clorox issuable on such exercise.

91X

FEDERAL TRADE COMMISSION
CO[illegible] EXHIBIT NO. 27
IN THE MATTER OF [illegible] & Gamble Company
DATE 12/18/57 WITNESS
[illegible] REPORTING CO., Official Reporter
By

If subsequent to the closing, any of the existing options shall be validly exercised by the holders thereof, upon transfer by Clorox to Buyer of the money received upon exercise of the options, Buyer further agrees to deliver to Clorox 8-1/2 shares for each 10 shares of Clorox with respect to which the option was exercised. Said obligation of Buyer shall not extend more than 120 days beyond the closing date except in the case of option holders who shall have died after the date hereof and not later than three months after the closing date.

Buyer shall not be required to issue fractional shares.

Also, the Buyer at the closing will assume and agree to pay or discharge the Company's liabilities and obligations to the extent and as provided in Section 8 below.

2. Closing. The closing of such exchange shall take place at the offices of the Buyer in the Procter & Gamble Building, 301 East Sixth Street, Cincinnati, Ohio, at 10 A.M. on August 1, 1957. The parties may by mutual agreement extend the date for closing not more than 90 days. At the closing:

(a) Conveyance and Transfer by the Company. The Company will deliver to the Buyer such deeds and bills of sale with covenants of warranty, endorsements, assignments, and other good and sufficient instruments of transfer and conveyance as, in the opinion of Buyer's counsel, Messrs. Dinsmore, Shohl, Dinsmore & Todd, shall be effective to vest in the Buyer good and marketable title to the assets and business to be delivered to the Buyer as provided in this Agreement.

(b) Payment by the Buyer. The Buyer will cause the issue and delivery to the Company of a certificate or certificates for the shares of common stock hereinbefore provided for, and will assume and agree to pay or discharge the Company's liabilities and obligations as provided in Section 8 below.

From time to time, at the Buyer's request (whether at or after the closing and without further consideration) the Company will execute and deliver further instruments of conveyance and transfer and take such other action as the Buyer reasonably may request more effectively to convey and transfer to the Buyer any of the property to be transferred hereunder, and will assist the Buyer in the collection or reduction to possession of said property.

tly Bound

3. Representations and Warranties by the Company. The Company represents and warrants as follows:

(a) Organization and Standing of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of Delaware; copies of the Company's Certificate of Incorporation and all amendments thereof to date (certified by the Secretary of State of Delaware) and of the Company's By-Laws as amended to date (certified by the Company's Secretary) which have been delivered to the Buyer are complete and correct as of the date of this Agreement. The Company is duly licensed or qualified and in good standing as a foreign corporation in all states where the Company owns property.

(b) Subsidiaries. The Company owns all rights, interest and property in Wattling Specialties Co., and all said rights, interest and property shall be transferred on the closing as a part of the herein-agreed exchange.

(c) Company's Authority. The execution and delivery of this Agreement to the Buyer and the exchange contemplated hereby have been duly authorized by the Company's Board of Directors, and the Company has delivered to the Buyer true and complete copies of the minutes of the meetings of its Board of Directors at which such authority was granted, such copies having been certified by the Company's Secretary. Upon approval and ratification by Company's stockholders, certified copies of the minutes of the meeting at which such action was taken shall be furnished to Buyer.

(d) Financial Statements. The Company has delivered to the Buyer copies of the following financial statements, all of which are true and complete to the best of the Company's knowledge and belief, and have been prepared in accordance with generally accepted accounting principles consistently followed throughout the period indicated:

(i) balance sheets of the Company as of June 30, 1956, (as certified by Lybrand, Ross Bros. & Montgomery, certified public accountants) and as of December 31, 1956, (as certified by the Company's Treasurer);

(ii) statements of the Company's profit and loss accounts (including, without limitation, all taxable income of every nature) and of its surplus for the fiscal years

ending June 30, 1950, through 1956, (as certified by Lybrand, Ross Bros. & Montgomery), and for the six months' period ended December 31, 1956, (as certified by the Company's Treasurer).

(e) Absence of Undisclosed Liabilities. Except as herein otherwise indicated and except as and to the extent reflected or reserved against in the Company's aforesaid December 31, 1956, balance sheet, the Company as of such date to the best of its knowledge and belief had no liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise and whether due or to become due, including, without limitation, tax liabilities due or to become due and whether incurred in respect of or measured by the Company's income for any period prior to December 31, 1956, or arising out of transactions entered into, or any state of facts existing prior thereto. The foregoing shall not be deemed to relate to unfunded past service credits of the Company's pension plan. The Company represents and warrants that it has no knowledge nor has reasonable grounds to know of any basis for the assertion against the Company, as of December 31, 1956, of any liabilities of any nature or in any amount not fully reflected or reserved against in the aforesaid December 31, 1956, balance sheet (except as herein otherwise indicated).

(f) Absence of Certain Changes. Since December 31, 1956, there has not been:

(i) any change in the Company's financial condition, assets, liabilities or business, or mode of operations, other than changes in the ordinary course of business, none of which has been materially adverse;

(ii) any damage, destruction or loss (whether or not covered by insurance) materially and adversely affecting the Company's properties or business, or of any material item carried in the Company's property account;

(iii) any declaration, setting aside or payment of any dividend or other distribution in respect of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock, except regular cash dividends;

(iv) any increase in the compensation payable or to become payable by the Company to any of its officers, nor any increase to employees or agents, except normal

increases or as provided in union employee contracts, nor any bonus payment or any stock option, pension or any agreement or arrangement therefor made to or with any thereof; or

(v) any labor trouble, or any event or condition of any character, materially and adversely affecting the Company's business or prospects.

(g) Tax Audits. The Company's Federal income and excess profits tax returns have been audited by the Bureau of Internal Revenue for all years to and including the fiscal year ending June 30, 1952. The results of such audits are properly reflected in the financial statements referred to in the aforesaid paragraph (d). No audit was made by the Bureau of Internal Revenue for the fiscal year ending June 30, 1953, but the statute of limitations with respect thereto has run.

(h) Title to Properties; Liens and Encumbrances. The Company has good and marketable title to all its properties and assets, real and personal, including those reflected in the aforesaid December 31, 1956, balance sheet (except as since sold or otherwise disposed of in the ordinary course of business), subject to no mortgage, pledge, lien, conditional sales agreement, encumbrance or charge except for liens shown on such balance sheet as securing specified liabilities set forth therein (with respect to which no default exists), and except for easements and for minor imperfections of title and encumbrances, if any, which are not substantial in amount and which do not materially detract from the value of the properties subject thereto nor materially impair the Company's operations.

(i) Realty; Buildings; Equipment. The Company has delivered to the Buyer an accurate list and summary description, certified by the Company's Treasurer, of all real property presently owned of record or beneficially by the Company, together with a brief description of all buildings located thereon; all such buildings currently used by the Company in its normal operations and the equipment therein are in good operating condition and repair and to the best of the Company's knowledge and belief conform with all applicable ordinances and regulations and building, zoning and other laws.

(j) Patents; Trade-Marks, etc. The Company has delivered to the Buyer an accurate list and summary description, certified by the Company's Treasurer, of all patents, if any, patent

applications, trade-marks, trade names, copyrights and licenses presently owned or held by the Company, all of which are to the best of the Company's knowledge and belief valid and in good standing.

(k) Accounts Receivable. The Company's bills and accounts receivable at December 31, 1956, are reflected in its aforesaid December 31, 1956, balance sheet.

(l) Contracts. The Company has no presently existing contract or commitment beyond June 30, 1957, involving payment by the Company of more than $10,000 except as listed in Exhibit A hereto.

True and complete copies of all the contracts listed in Exhibit A will be or have been delivered to the Buyer. The Company has to the best of its knowledge and belief complied with all the provisions of such instruments and of all other contracts and commitments to which it is a party, and is not materially in default under any thereof.

(m) Examination of Contracts, etc. Buyer shall have to and including 30 days after delivery within which to examine the copies of the contracts delivered to Buyer and listed in Exhibit A. If Buyer finds any of said contracts is in any material respect different from the present understanding of Buyer, Buyer may terminate this Agreement forthwith provided that Buyer gives written notice of such fact and of such termination to the Company on or before the expiration of said 30-day period.

In the event Buyer elects to have assigned to it and to assume at the closing any of the contracts listed in Exhibit A and Exhibit B, Buyer shall furnish to the Company a list thereof on or before 45 days after delivery for Buyer's examination. In the event the Company finds that it will be unable (without the payment of consideration) to assign effectively any contract so specified by Buyer, the Company shall notify Buyer of such fact in writing, whereupon Buyer, if it deems such assignment to be material, may forthwith terminate this Agreement by written notice to be given to the Company within five (5) days after the Company has notified Buyer of its inability to effect such assignment.

In the event the Company finds it is unable (without the payment of consideration) to obtain a cancellation of any contracts which Buyer has not elected to have assigned to it and assume, the Company shall notify Buyer of such fact in writing,

and unless Buyer notifies the Company in writing within five (5) days thereafter that it will indemnify and hold harmless the Company from and against all liabilities, claims and damages thereunder, the Company may forthwith terminate this Agreement by written notice to the Buyer.

(n) Compensation Paid by Company, Banks, etc. The Company has delivered to the Buyer a true and complete list as of the date of this Agreement, certified by the Company's Treasurer, showing:

(i) the names of all persons whose compensation from the Company for the fiscal year ending June 30, 1957, will equal or exceed $10,000, together with a statement of the full amount paid or payable to each such person for services rendered or to be rendered in said fiscal year, and the basis therefor;

(ii) the name of each bank in which the Company has an account or safe deposit box and the names of all persons authorized to draw thereon or to have access thereto; and

(iii) the names of all persons, if any, holding powers of attorney from the Company, and a summary statement of the terms thereof.

(o) Litigation. Except for suits fully covered by insurance and suits of a character incident to the normal conduct of the Company's business and involving not more than $5,000 in the aggregate, there is no known litigation or proceeding pending, or to the knowledge of the Company threatened, against or relating to the Company, its properties or business, nor does the Company know or have reasonable grounds to know of any basis for any such action, or of any governmental investigation relative to the Company, its properties or business, except a claim of the government of Canada for certain import duties, amounting to no more than $25,000, which is being contested.

(p) Disclosure. No representation or warranty by the Company in this Agreement, nor any statement or certificate furnished or to be furnished to the Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any statement of a material fact known to be untrue or omits or will omit to state a known material fact necessary to make the statements contained therein not misleading.

4. Access and Information. The Company agrees to give to the Buyer and to the Buyer's counsel, accountants, engineers and other representatives full access, during normal business hours throughout the period prior to the closing, to all of the Company's properties, books, contracts, commitments and records, and to furnish the Buyer during such period with all such information concerning the Company's affairs as the Buyer reasonably may request.

5. Conduct of Business Pending Closing. The Company warrants and agrees that, pending the closing:

(a) The Company's business shall be conducted only in the ordinary course;

(b) no change shall be made in the Company's Certificate of Incorporation or By-Laws except as may be first approved in writing by the Buyer;

(c) no change shall be made in the Company's authorized or issued capital stock except pursuant to options now outstanding;

(d) no unusual dividend or other distribution or payment other than its regular dividends (which shall not be changed) shall be declared or made in respect of the Company's stock, nor will the Company directly or indirectly redeem, purchase or otherwise acquire any of such stock; provided that if the closing occurs between July 19 and September 10, 1957, the Company may declare a regular quarterly dividend payable to stock of record on a date prior to the closing date;

(e) no increase shall be made in the compensation payable or to become payable by the Company to any officer, employee or agent, except with Buyer's express consent, nor shall any bonus payment, stock options, stock purchase or pension, or arrangement therefor be made by the Company to or with any thereof; but normal increases or as provided in union employee contracts, whether modifications or renewals thereof, are not hereby prohibited;

(f) no contract or commitment shall be entered into by or on behalf of the Company extending beyond July 31, 1957, without the Buyer's prior written approval, except commitments which will not involve payment by the Company of more than $10,000 and except normal commitments for the purchase of raw materials and supplies as listed in Exhibit A or Exhibit B hereto;

(g) no change shall be made affecting the banking and safe deposit arrangements referred to in the foregoing Section 3(n) without the Buyer's prior written approval;

(h) the Company will use its best efforts to preserve its business organization intact, to keep available to the Buyer the services of its present officers and employees, and to preserve for the Buyer the good will of the Company's suppliers, distributors, customers and others having business relations with it;

(i) the Company will comply with the laws of all states in which the Company has properties (including, without limitation, any requirements of the so-called "Bulk Sales Act") and all other applicable laws as may be required for the valid and effective consummation of the exchange provided for in this Agreement.

6. Further Requirements in Connection with the Closing. At the closing:

(a) Change of Company's Name. The Company will take all steps necessary or appropriate to change its name, as of the date of the closing, from Clorox Chemical Co. to a new name bearing no resemblance to its present name;

(b) Books and Records. The Company will turn over to the Buyer all of the Company's books and records (other than its stock book, stock ledger and other books relating to its capital stock). During the five years succeeding the closing, each party will permit the other party at all reasonable times on request, to inspect all such books and records and make extracts therefrom.

7. Conditions Precedent to Company's and Buyer's Obligations. The respective obligations of the Company and Buyer under this Agreement are subject respectively to the fulfillment, prior to or at the closing, of each of the following conditions:

(a) Company's Representations and Warranties True at Closing. The Buyer's obligations are subject to the condition that the Company's representations and warranties contained in this Agreement or in any certificate or document delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby shall be true at the time of closing as though such representations and warranties were made at such time.

(b) Company's Performance. The Buyer's obligations are subject to the condition that the Company shall have substantially performed and complied with all agreements and conditions required by this Agreement to be performed or complied with prior to or at the closing.

(c) Officers' Certificate. The Buyer's obligations are subject to the condition that the Company shall have delivered to the Buyer a certificate of the Company's President and Treasurer, dated the closing date, certifying to the fulfillment of the conditions set forth in Section 7(a) and (b) above.

(d) Buyer's Examination and Satisfaction. The Buyer shall have made such examination of the Company's properties, books, records, finances, and condition as it may desire, and shall have determined that the condition of the Company, including its assets, liabilities, and operations is substantially as reflected on the Company's books and in the Company's Balance Sheet and Operating Statement of December 31, 1956, and that there have been no materially adverse events or developments affecting the Company's business or the proposed transaction up to the closing date.

(e) Opinion of Company Counsel. The Company and the Buyer shall have received an opinion of Company's counsel, Steinhart, Goldberg, Feigenbaum & Ladar, dated the closing date, that

(i) the Company's corporate existence and good standing are as stated in Section 3(a) above;

(ii) the Company has good and marketable title to all its properties and assets as stated in Section 3(h) above;

(iii) except as may be specified by such counsel, such exceptions to be acceptable to Buyer (except matters fully insured, the claim of the Canadian government for import duties hereinbefore referred to, and immaterial claims), they do not know or have any reasonable grounds to know of any litigation, proceeding or governmental investigation pending or threatened against or relating to the Company, its properties or business;

(iv) all proceedings required by law or the provisions of this Agreement to be taken by the Company in connection with the transactions provided for by this Agreement have been duly and validly taken;

(v) the Company has complete and unrestricted power to sell, convey, transfer and deliver to the Buyer all of the assets, business and good will to be sold hereunder, and the instruments executed and delivered to the Buyer hereunder are valid in accordance with their terms and effectively vest in the Buyer good and marketable title to the Company's assets, business and good will as contemplated by this Agreement, free and clear of any and all liabilities, obligations, liens and encumbrances (except only those liabilities and obligations expressly assumed by the Buyer as provided in Section 8 below); and

(vi) the exchange and the conveyances, transfers and deliveries hereunder to the Buyer are not in contravention of any applicable Federal, state or local law insofar as the Company's conduct and obligations are concerned;

(f) Opinion of Buyer's Counsel. The Buyer and the Company shall have received from Buyer's counsel, Dinsmore, Shohl, Dinsmore & Todd, an opinion to the effect set forth in subdivisions (iv), (v) and (vi) of Section 7(e) above; and the Company shall also have received from Buyer's counsel an opinion applicable to Buyer paralleling subdivisions (i), (iv) and (vi) of Section 7(e) above, including an opinion that the Procter & Gamble shares when delivered hereunder will be duly and validly issued, fully paid and non-assessable.

(g) Ruling by Commissioner of Internal Revenue. The Company shall have obtained from the Commissioner of Internal Revenue a ruling in form satisfactory to the Company's counsel, to the effect that no gain or loss will be realized by the Company as a result of the exchange or by the Company's stockholders as a result of the distribution to its stockholders of shares of Procter & Gamble received by the Company in the exchange.

8. Buyer's Assumption of Liabilities and Obligations. Except as provided in Section 3(m), upon the closing the Buyer will assume and pay or discharge all those liabilities and obligations of the Company as of the closing date, whether accrued, absolute, contingent or otherwise, excepting only those liabilities, if any, which were known to the Company and were not disclosed by the Company to the Buyer.

Except for State income and Franchise taxes on or measured by income attributable to this transaction which Buyer hereby specifically assumes, the Buyer shall not assume or

be liable for any liability of the Company for taxes or otherwise, in respect of any income or profit derived from the exchange provided for by this Agreement.

9. Name Containing "Clorox." Buyer shall have the right to form a subsidiary company prior to the closing, which may use the word Clorox in its corporate name. The Company on request from the Buyer at any time before closing agrees to give its consent to the use of any such name and to the qualification of such subsidiary in any State where Buyer deems such qualification necessary. No use may be made of the word Clorox other than in the corporate name of Buyer or its subsidiary nor shall Buyer or its subsidiary permit any use of the word Clorox alone or in conjunction with any other words by any other person, firm or corporation prior to the closing. If for any reason the closing should not take place, Buyer will promptly take such action as may be necessary to cause said subsidiary to cease using the word Clorox.

10. Brokerage; Company's Expenses, etc. The Company will pay no brokerage or commission and will indemnify the Buyer and hold it harmless against and in respect of any claim by anyone employed by the Company or who claims to have been employed by the Company for brokerage or other commissions relative to this Agreement or to the transactions contemplated hereby. However, the Company shall have the right to reserve or retain out of the assets exchanged sufficient cash, but not more than $150,000 plus any amounts paid or to be paid on account of sales (excise) taxes (to such extent reducing the assets to be transferred to the Buyer in the exchange) for the payment of all taxes and other expenses incurred and/or accrued by the Company for its own account to and after the date of closing and attributable to the exchange transaction, to the continuation of the Company pending dissolution and to the dissolution and liquidation of the Company (to the extent not paid before closing). Any balance not so used shall be transferred to Buyer on completion of liquidation.

11. Adjustment of Shares in Certain Events. Procter & Gamble will not issue any stock dividend or stock by way of split or rights or warrants to purchase shares of its common stock at less than its then fair market value prior to the date of consummation of the exchange without making a proportionate adjustment in the number of Procter & Gamble shares to be delivered hereunder.

12. Coverant Not to Compete. The undersigned officers of the Company, upon consideration of the promises herein set forth, and the Company agree that from and after the closing, it and they will not directly or indirectly own, manage, operate, join, control, or participate in the ownership, management, operation or control of, or be connected in any manner with, any business under any name similar to the Company's name. The individual parties signatory hereto further agree that for a period of two (2) years after the closing, they will not in any manner directly or indirectly compete with, or become interested in any competitor of, the Buyer throughout the United States, but acquisition or ownership of 5% or less of the issued and outstanding securities of a competitor is not hereby prohibited. Said parties signatory hereto agree that the remedy at law for any breach by any of them of the foregoing will be inadequate and that the Buyer, in addition to any other remedies, shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damage to the Buyer.

13. Nature and Survival of Company's Representations, etc. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant hereto or in connection with the transactions contemplated hereby shall be deemed representations and warranties by the Company hereunder. All representations, warranties and agreements made by the Company in this Agreement or pursuant hereto shall survive the closing hereunder and any investigation at any time made by or on behalf of the Buyer. Nothing herein contained shall prevent the Company from dissolving and liquidating at such time as its Board of Directors may determine it to be in the best interest of the Company and the stockholders.

14. Effect of Applicable Laws. The terms of this Agreement and the rights and obligations of the parties are subject to the requirements (for example, those with respect to notice, waiting period, reports, recordings, filings, etc.) of and compliance with any applicable Federal or State law now in force or hereafter enacted and the parties hereto agree to comply with any such law and to cooperate fully with each other in such compliance. However, if such compliance delays the closing more than six calendar months from the date hereof, or if litigation or administrative proceedings in connection with such compliance are commenced prior to closing, then either party may on thirty days' notice cancel and terminate this Agreement.

15. Buyer and Buyer's Subsidiary. Buyer shall have the right by assignment of this Agreement or otherwise to have the Procter & Gamble shares to be delivered hereunder and the performance of this Agreement made by and to a wholly-owned subsidiary of Buyer (now existing or organized hereafter) and any rights, agreements, covenants or warranties in favor of Buyer shall inure to and run to said subsidiary and also to Buyer, and either may enforce the same. Any and all obligations running to the Company shall be binding on said subsidiary and upon the Buyer.

16. No Liability on Termination for Default. If at the time herein provided for the closing either the Company or the Buyer is in default in any material respect in complying with or observing any material term or provision of this Agreement to be complied with or observed by such party at or before the closing, the other of said parties may elect not to proceed with the closing at the time herein provided and may by notice to the defaulting party given not less than three days before the closing, terminate this Agreement. In the event of such termination by reason of default, as aforesaid, unless such default was willful, neither of said parties shall have any right or claim against the other by reason of this Agreement and all rights and obligations hereunder shall terminate.

17. Covenant Against Assignment. Subject to the provisions of Section 15 hereof, neither this Agreement nor the rights of either of the parties hereunder may be assigned by either party hereto without the prior written consent of the other party. Subject to such covenant, all the terms and provisions of this Agreement shall be binding upon and inure to the benefit and be enforceable by the successors and assigns of the Company and the Buyer.

18. Ohio Law to Govern. This Agreement is being delivered and is intended to be performed in the State of Ohio and shall be construed and enforced in accordance with the laws of such State.

19. Notices. All notices, requests, demands and other communications hereunder shall be in writing and delivered to the Company or the Buyer, and shall be deemed to have been duly given if delivered or if mailed, first class postage prepaid, registered mail, return receipt requested:

(a) if to the Company, at 850 - 42nd Avenue, Oakland 1, California, Attention of the President, or at such other address as the Company may from time to time furnish the Buyer in writing;

(b) if to the Buyer, at the Procter & Gamble Building, 301 East Sixth Street, Cincinnati 1, Ohio, Attention of the Executive Vice President.

20. Counterparts. This Agreement is executed in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

Attest:

CLOROX CHEMICAL CO.

_____

By_____
President

_____
W. J. Roth

_____
W. L. Wolford

_____
Earl M. Matson

_____
V. L. Montgomery

_____
W. M. Towers

Attest:

THE PROCTER & GAMBLE COMPANY

_____

By_____
Executive Vice President

CLOROX CHEMICAL CO.

850 - 42nd AVENUE
OAKLAND 1, CALIFORNIA

Commission's Exhibit No. 28
Notice of special meeting of stockholders of
Clorox Chemical Co. dated July 1, 1957
and Proxy statement

PROXY STATEMENT
OF CLOROX CHEMICAL CO.

This proxy statement is furnished in conpection with the solicitation of proxies to be used at a special meeting of stockholders of Clorox Chemical Co. (hereinafter sometimes called "Clorox") to be held at the office of the corporation, 850 - 42nd Avenue, Oakland, California, on Wednesday, July 24, 1957, at the hour of 2:00 o'clock P. M. (Pacific Daylight Time) and at any adjournment or adjournments thereof, for the purposes set forth in the attached Notice of Special Meeting of Stockholders.

SOLICITATION AND REVOCABILITY OF PROXY

The solicitation of the enclosed proxy is made by and on behalf of the management of Clorox. The enclosed proxy may be revoked by the person giving it at any time before it is exercised by a written revocation, or by a duly executed proxy bearing a later date filed with the Secretary, or orally in open meeting.

The total cost of preparing, assembling and mailing the proxy statement, the form of proxy, and any additional material relating to the same meeting or subject matter furnished to security holders subsequent to the furnishing of the proxy statement, will be borne by Clorox. If it appears advisable to solicit proxies otherwise than by use of the mails following the original mailing of the proxy material, such solicitation of proxies may be made by some of the officers and regular employees of the corporation, none of whom will receive additional compensation therefor. The corporation may also request banks, brokers and other nominees to forward proxy material to their customers or principals who have a beneficial interest in the capital stock of the corporation registered in the name of nominees, and will reimburse such banks, brokers and other nominees for their reasonable out-of-pocket expenses.

VOTING SECURITIES

There are outstanding 724,744 shares of the capital stock of the corporation. All outstanding shares of capital stock are voting shares. Only stockholders of record at the close of business on June 21, 1957, are entitled to vote at the Special Meeting. No stock can be voted at said meeting which shall have been transferred on the books of the corporation after said June 21, 1957. The corporation also has outstanding stock options which were granted to officers and key employees pursuant to the Restricted Stock Option Plan (as amended) of the corporation. The holders of said options are entitled to purchase not to exceed an additional 27,700 shares of the capital stock of the corporation pursuant to and in accordance with the terms of the stock options. The stock options are presently exercisable as to 7,700 shares.

SECURITY HOLDINGS OF OFFICERS AND DIRECTORS AND PRINCIPAL HOLDER OF VOTING SECURITIES

The number of shares of the capital stock of the corporation held beneficially, directly or indirectly, as of June 21, 1957, by each person who has been a director or officer of the corporation at any time since July 1, 1956, the beginning of the last fiscal year of the corporation, is as follows:

Name	Offices	No. of Shares
Larry J. Barton	Vice-President & Director	2,400
Robert Dalziel	Chairman of Board of Directors	20,830
B. J. Feigenbaum	Vice-President & Director	3,300
Earl M. Matson	Vice-President, Secretary & Director	1,860
V. L. Montgomery	Vice-President—Production	1,920
T. D. Parks	Vice-President—Research	50
W. J. Roth	President & Director	36,972 (1)
W. M. Towers	Treasurer, Assistant Secretary & Director	710
B. F. Trimpe	Vice-President—Sales	20
L. B. Vallandigham	Assistant Treasurer	1,000
W. L. Wolford	Executive Vice-President & Director	5,720

(1) W. J. Roth, President of the corporation, owns directly of record and beneficially 36,972 shares of the capital stock of the corporation. Mr. Roth is a co-executor of the Estate of Annie I. Murray, Deceased, which holds 17,600 shares of capital stock of the corporation. Mr. Roth is also a co-trustee of the Annie I. Murray Trust (a Trust created under the Last Will and Testament of Annie I. Murray, Deceased) which owns 7,700 shares of the capital stock of the corporation. Both Mr. Roth and his wife, Annie L. Roth, have a substantial beneficial interest in said Estate and said Trust. Mr. Roth is also a co-trustee of a Trust created under the Last Will and Testament of W. C. R. Murray, Deceased, which owns 33,000 shares of the capital stock of the corporation. Mr. Roth does not have any beneficial interest in the last mentioned Trust or in any of the shares owned by said Trust. Thus, Mr. Roth has a beneficial ownership interest in a total of 62,272 shares of the capital stock of the corporation, representing 8.6 per cent of the outstanding voting securities of the corporation; he has a record ownership interest only in an additional 33,000 shares, representing an additional 4.6 per cent of the outstanding voting securities of the corporation.

ACTION TO BE TAKEN AT SPECIAL MEETING

The primary purpose of the Special Meeting is to consider and act upon a proposal to authorize the exchange of substantially all of the property and assets of Clorox Chemical Co. for shares of the common stock of The Procter & Gamble Company in accordance with the Letter Contract and Agreement between the parties (hereinafter for convenience referred to as the "exchange transaction"), to approve the Letter Contract and Agreement and the Plan of Reorganization of Clorox, and to authorize the officers and directors of Clorox to take any further action deemed necessary or desirable to make such exchange effective, including amendments to the Letter Contract and Agreement as well as to the Plan of Reorganization.

It is proposed that the exchange transaction be consummated on August 1, 1957, if authorized by the necessary affirmative vote of Clorox stockholders and if the Agreement is not canceled or terminated in accordance with its terms. The closing date may be extended in accordance with the terms of the Agreement in certain events including the requirement of additional time to comply with any provision of law.

It is the present intention of the management to call a further special meeting of the stockholders of Clorox to be held at the earliest date possible after the consummation of the exchange transaction and the elimination of the outstanding Clorox stock options (either through exercise, expiration or cancellation) for the purpose of effecting the dissolution of the corporation under Section 275 of the Delaware Corporation Law. The proxies of Clorox stockholders will be solicited for use at such special meeting by and on behalf of the management of Clorox, and an appropriate Proxy Statement will be furnished to each stockholder whose proxy is so solicited. Immediately upon such dissolution, Clorox will distribute the shares of Procter & Gamble stock received by Clorox in the exchange transaction in complete liquidation of Clorox in the manner hereinafter set forth.

Counsel for Clorox has pointed out that since Clorox is a Delaware corporation its affairs are governed by the laws of that state. Counsel has advised that the exchange transaction does not constitute a statutory merger or consolidation under the Delaware Corporation Law. The Delaware Corporation Law makes no provision for the payment to a stockholder of Clorox, who objects to the proposed exchange transaction, of the value of his stock.

A. SUMMARY OF MATERIAL FEATURES OF PROPOSED EXCHANGE PURSUANT TO THE PLAN OF REORGANIZATION

Agreement for Exchange of Property and Assets

Clorox Chemical Co. and The Procter & Gamble Company of Cincinnati, Ohio, (hereinafter sometimes called Procter & Gamble) have entered into an Agreement (consisting of a Letter Contract dated April 18, 1957, and accepted by Clorox on April 22, 1957, and a supplemental Agreement dated May 28, 1957, hereinafter jointly referred to as the "Agreement") whereby Clorox has agreed, subject to the authorizing vote of the holders of at least two-thirds (⅔) of the outstanding capital stock of Clorox (and in no case less than the affirmative vote of the holders of 501,630 shares of Clorox stock), to transfer to Procter & Gamble, or to a wholly-owned subsidiary of Procter & Gamble, all of the property and assets of Clorox, subject to its liabilities and obligations which are to be assumed (except to the extent provided in the Agreement) solely in exchange for common stock of Procter & Gamble.

The Agreement has been authorized by the Board of Directors of Clorox and ratified by the Board of Directors of Procter & Gamble. Approval of the Agreement by the stockholders of Procter & Gamble is not required by law.

Basis of Exchange Transaction

The number of shares of Procter & Gamble common stock to be delivered to Clorox on such exchange is 8½ shares of Procter & Gamble common stock for each 10 shares of Clorox capital stock issued and outstanding on the closing date and a like 8½ shares of Procter & Gamble common stock for each 10 shares of Clorox capital stock thereafter issued pursuant to the exercise of the outstanding stock options of Clorox. (See "Outstanding Stock Options.") The proceeds received by Clorox upon the exercise of such stock options after the closing date shall be forthwith paid by Clorox to Procter & Gamble or to its wholly-owned subsidiary.

Outstanding Stock Options

Clorox had outstanding on June 21, 1957, stock options covering the issuance of not to exceed 27,700 shares of Clorox capital stock of which 21,200 shares were issuable at $28.75 per share, and 6,500 were issuable at $29.50 per share. The aforesaid stock options were granted by Clorox to certain of its executives and key employees pursuant to its Restricted Stock Option Plan (as amended). It is anticipated that all unexercised options will have been exercised prior to the dissolution and liquidation of Clorox.

In accordance with the provisions of the stock option agreements, the said options will first become exercisable as to not to exceed the full number of shares covered thereby upon the closing date of the exchange transaction by reason of the termination of the employment of all optionees by the present Clorox Chemical Co. on the closing date. The options will be exercisable for a period of three months after the termination of an optionee's employment (or in the event of the death of an optionee while so employed or prior to the expiration of said three-month period, then during a period of one year following the death of an optionee). It is anticipated that all stock options will be exercised by the optionees on the closing date or promptly thereafter, and that Clorox will have obtained a waiver by each optionee of his right to exercise any unexercised rights under his option at any time subsequent to two weeks after the closing date. Thus, each optionee will have only a limited period within which to exercise his option and no undue delay in commencing dissolution proceedings of Clorox should result.

Liquidation of Clorox

Pursuant to the Plan of Reorganization approved and adopted by resolution of the Board of Directors of Clorox on April 22, 1957, a copy of which Plan of Reorganization is set forth as Exhibit A hereto, proceedings for the dissolution of Clorox will be commenced at the earliest practicable date after consummation of the exchange transaction and the elimination of the outstanding Clorox stock options either through exercise, expiration or cancellation. The shares of Procter & Gamble stock received by Clorox in such exchange will be distributed to the stockholders of Clorox pro rata in complete liquidation of Clorox in exchange for and upon surrender of their shares of the capital stock of Clorox. Procter & Gamble will not issue any fractional shares. Full shares representing the aggregate of fractional shares which would otherwise be distributed direct to Clorox stockholders will be delivered to an agent for Clorox stockholders. The agent (to be designated by Clorox) will act upon the instructions of and for each stockholder who has an interest in less than one full share of Procter & Gamble stock either (i) if so instructed within thirty (30) days of the date of delivery to the agent, to purchase an interest or interests in less than a full share at the expense of such stockholder so that the stockholder will be entitled to receive one additional full share (the same to be delivered to such stockholder), or (ii) if no instruction is received by the agent within said thirty (30) days (or if specifically so instructed), to sell such fractional interest for and at the expense of such stockholder and to distribute the proceeds of such sale to the stockholder. The expense to be borne by a stockholder who directs the purchase or sale of a fractional interest may include usual brokerage commissions and charges and a nominal fee to the bank or trust company appointed to act as agent.

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Federal Tax Status of Exchange Transaction and Liquidation of Clorox

In the opinion of counsel for Clorox, neither the exchange transaction nor the distribution, in complete liquidation of Clorox, to Clorox stockholders of the shares of Procter & Gamble stock received by Clorox in such exchange will result in the recognition of gain or loss for Federal income tax purposes, either by Clorox or by its stockholders under the Internal Revenue Code of 1954. Gain may be recognized for Federal income tax purposes to the extent of any cash received by a Clorox stockholder upon the sale of any fractional interest in a share of Procter & Gamble stock. Clorox has applied to the Internal Revenue Service for a ruling covering these and related questions and consummation of the exchange transaction is conditioned upon the receipt by Clorox of a ruling to the foregoing effect satisfactory in form and content to counsel for Clorox.

Conditions to the Consummation of Exchange Transaction

In addition to the usual conditions with respect to the verification of physical properties and financial condition, absence of any materially adverse event or development, legal opinions by counsel of both parties, substantial compliance with the terms and conditions of the Agreement, and the usual warranties, the exchange transaction is expresaly conditioned upon the following:

(i) Authorization of the exchange transaction by the affirmative vote of the holders of not less than 501,630 shares of Clorox capital stock at the Special Meeting or any adjournment or adjournments thereof;

(ii) Receipt by Clorox of a ruling from the Internal Revenue Service covering the Federal tax effect of the exchange transaction and liquidation of Clorox satisfactory in form and content to counsel for Clorox (See Federal Tax Status)

(iii) The right of Procter & Gamble or Clorox to terminate the Agreement at any time prior to the closing, if the other is in default in any material respect in complying with or observing any material term or provision of the Agreement.

Dividends

The most recent dividend paid by Clorox was a quarterly dividend of 42½¢ per share paid on June 10, 1957, to stockholders of record at the close of business on May 24, 1957. The most recent dividend paid by Procter & Gamble was a quarterly dividend of 50¢ per share paid on May 15, 1957, to stockholders of record at the close of business on April 22, 1957. The Agreement provides that Clorox will make no distribution or payment on its stock prior to the closing date other than its regular dividends which shall not be changed, except for payment dates. The Board of Directors of Clorox expects to declare a third-quarter dividend of 42½¢ per share payable on July 30, 1957, to stockholders of record at the close of business on July 19, 1957. It is anticipated that Clorox stockholders will have received three quarterly dividends during the first three quarters of the calendar year 1957 and that they will receive a further quarterly dividend during the calendar year 1957 on the shares of Procter & Gamble common stock to be delivered to Clorox in the exchange transaction and to be distributed to them upon liquidation of Clorox. If delay in the closing date should result in Clorox stockholders not receiving a dividend on Procter & Gamble shares during the calendar year 1957, it is expected that a fourth-quarter dividend of 42½¢ per share will be declared by Clorox during the calendar year 1957 on the then outstanding shares of the capital stock of Clorox. There can, of course, be no assurance as to the future dividends of either company as they are dependent on future action of the Board of Directors of each company.

Operations After Consummation of Exchange Transaction

The management of Clorox has been advised that it is the present intention of Procter & Gamble, in order to preserve the goodwill connected with the name and business of Clorox, to form a wholly-owned subsidiary to be known as The Clorox Company, an Ohio corporation, to which corporation will be transferred the property and assets of Clorox. It is presently intended that The Clorox Company will continue the business of Clorox without major change in personnel, suppliers or method of distribution, except that it is anticipated that W. J. Roth, President of Clorox, will become a director of and consultant to The Clorox Company. The Clorox Company will be able to avail itself of Procter & Gamble advisory services.

Expenses in Connection with Exchange Transaction

Clorox was represented in the negotiation of the Agreement by J. Barth & Co., Investment Brokers, San Francisco, California, which firm will not receive any brokerage from Clorox. Clorox has the right to reserve out of the assets to be transferred in the exchange transaction up to $150,000, plus any amounts paid or to be paid on account of sales (excise) taxes, for the payment of taxes and other expenses attributable to the exchange transaction, to the continuation of Clorox pending dissolution, and to the dissolution and liquidation of Clorox. The balance of the amount reserved by Clorox and not so used is to be transferred to Procter & Gamble (or its subsidiary) upon the completion of the liquidation of Clorox. Procter & Gamble is to pay any brokerage fee incurred by it, together with any and all fees, expenses, taxes and charges allocable to its portion of the exchange transaction.

PROPOSED EXCHANGE TRANSACTION

The Procter & Gamble Company has received a request from the Federal Trade Commission for certain information relating to the proposed transaction. Dinsmore, Shohl, Dinsmore & Todd, Counsel for The Procter & Gamble Company, have rendered to it their opinion that the proposed transaction would not violate any federal law in the absence of later factual developments. The Agreement contains a provision that the closing is conditioned upon the rendition of a further opinion by said firm (dated as of the closing date) that the exchanges and transfers are not in contravention of any applicable federal, state or local laws.

In the event the proposed exchange transaction between The Procter & Gamble Company and Clorox is consummated in accordance with the Agreement, The Procter & Gamble Company will have outstanding not to exceed 20,508,117 shares of its common stock, the exact number depending upon the number of additional shares of Clorox capital stock issued by Clorox upon exercise of outstanding Clorox stock options. There were 19,868,539 common shares of The Procter & Gamble Company outstanding on June 5, 1957, and said figure of 20,508,117 is based upon the assumption that the same number of its common shares will be outstanding on the date of the consummation of the proposed exchange transaction. If the number of common shares of The Procter & Gamble Company outstanding on the date of the consummation of the proposed exchange transaction is more than 19,868,539 then said figure of 20,508,117 will be increased by the number representing the difference between 19,868,539 and the number of common shares of The Procter & Gamble Company actually outstanding on the date of the consummation of the proposed exchange.

It is anticipated that the excess of the market value of the shares of the common stock of The Procter & Gamble Company delivered to Clorox in exchange for the property and assets of Clorox, over the value ascribed to the net tangible assets of Clorox so acquired will be included in the Goodwill, Patents and Licenses account of The Procter & Gamble Company. It is the present intention of The Procter & Gamble Company not to amortize amounts carried in this account.

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C. FINANCIAL DATA AND FINANCIAL STATEMENTS

Range of Security Prices

The high and low prices at which transactions were effected on the Pacific Coast Stock Exchange (formerly the San Francisco Stock Exchange) in the case of Clorox stock, and on the New York Stock Exchange in the case of Procter & Gamble common stock during the periods indicated below were:

Period		CLOROX (1)		PROCTER & GAMBLE (2)	
		High	Low	High	Low
1955	January, February, March	27	22 ½	51	45 ½
	April, May, June	27¼	25 ⅜	51	47 ¼
	July, August, September	33 ½	27 ¼	54	48 ½
	October, November, December	37	29 ½	50 ¼	48 ⅜
1956	January, February, March	37 ½	33 ¼	54	47 ¼
	April, May, June	39 ⅛	31	55 ¼	48 ½
	July, August, September	33 ¼	29	55	48 ½
	October, November, December	32	28 ½	51 ½	45 ½
1957	January, February, March	37	31	50 ½	44 ⅜
	April, May	40	36	49 ½	46 ⅜

(1) Prices of Clorox stock have been adjusted for a 10% stock dividend of May 5, 1955, and for a 100% stock dividend of April 20, 1956.

(2) Prices of Procter & Gamble stock have been adjusted for a 2-for-1 split of June 1, 1956.

The closing sale price on the Pacific Coast Stock Exchange on June 26, 1957, for Clorox stock was 38 ¼ per share.

The closing sale price on the New York Stock Exchange on June 26, 1957, for Procter & Gamble common stock was 46 ⅜ per share.

Summary of Earnings, Book Values and Dividends

The following is a summary of the earnings and book values on an adjusted per share basis for Clorox and for Procter & Gamble and its consolidated subsidiaries. The respective amounts set forth are based upon audited statements of Lybrand, Ross Bros. & Montgomery for Clorox and of Haskins & Sells for Procter & Gamble, with the exception of the amounts for the period July 1, 1956, through March 31, 1957, which are based upon unaudited statements of the respective companies, but neither company knows of any adjustment necessary for a fair presentation of the results of their respective operations. There is further included a third column of pro forma earnings and book value per share of Clorox stock giving effect to the proposed exchange transaction for the periods shown.

	PROCTER & GAMBLE (1)	CLOROX (2)	PRO FORMA PER SHARE OF CLOROX STOCK (3)
Earnings Per Share:			
Fiscal Year ended June 30, 1952	$ 2.16	$ 1.73	$ 1.83
" " " June 30, 1953	2.18	1.86	1.85
" " " June 30, 1954	2.71	1.86	2.29
" " " June 30, 1955	2.97	2.82	2.53
" " " June 30, 1956	3.05	2.81	2.60
Nine Months ended March 31, 1957 (*Unaudited*)	2.63	2.68	2.25
Book Value Per Share:			
June 30, 1956	$20.96	$13.50	$17.68

(1) The earnings per share for Procter & Gamble have been adjusted for a 2-for-1 split of June 1, 1956. Earnings per share are on the basis of the average number of shares outstanding during each period.

(2) The earnings per share for Clorox have been adjusted for a 10% stock dividend of May 5, 1955, and for a 100% stock dividend of April 20, 1956.

(3) The figures in this column were computed on the basis of a consummation of the proposed exchange transaction as of the commencement of the five-year and nine-month period shown and adjusted for the stock dividends and stock split designated in notes (1) and (2). The figures represent the earnings for the respective periods and the book value as of June 30, 1956, as so computed per share of Clorox capital stock.

Dividends Per Share:

The first two columns of the following table set forth the actual cash dividends, adjusted for the stock dividends and stock split designated in notes (1) and (2) above, per share of Procter & Gamble and Clorox stocks for the periods shown. The ratio of the proposed exchange transaction is 0.85 of a share of Procter & Gamble stock for one share of Clorox, and for purposes of comparison only, the third column sets forth 85% of the Procter & Gamble dividend for the respective periods. Thus, the figures represent the cash dividend which a Clorox stockholder would have received (on the assumption that the dividend policy of Procter & Gamble would have been unchanged), on the equivalent of one share of Clorox stock if the proposed exchange transaction had been consummated as of the commencement of the five-year and nine-month period shown.

	PROCTER & GAMBLE	CLOROX	PROCTER & GAMBLE DIVIDEND PER SHARE OF CLOROX STOCK
Fiscal Year ended June 30, 1952	$1.30	$1.136	$1.105
" " " June 30, 1953	1.30	1.25	1.105
" " " June 30, 1954	1.625 (1)	1.364	1.38125
" " " June 30, 1955	1.75 (1)	1.398	1.4875
" " " June 30, 1956	1.75 (1)	1.55	1.4875
Nine Months ended March 31, 1957	1.35	1.275	1.1475
Current quarterly dividend on an annual basis	$2.00	$1.70	$1.70

(1) Includes extras of $ .325 paid in May, 1954, and $ .25 paid in May, 1955, and 1956.

Subsequent to March 31, 1957, a dividend of $ .425 per share was paid on Clorox stock on June 10, 1957, and a dividend of $ .50 per share was paid on Procter & Gamble stock on May 15, 1957.

Note: In reviewing the foregoing summaries, attention should be called to the following comparative facts:

During this five-year and nine-month period, Clorox devoted its entire effort to the manufacture and marketing of one product, CLOROX—liquid bleach and disinfectant. During the same period The Procter & Gamble Company expanded its business in the United States by introducing nationally ten new products in three highly competitive and widely diversified fields. It has also entered the peanut butter, baking mix and household paper products businesses. It built a new toiletries and a new food products factory. It acquired two food products factories, one of which has been materially enlarged. It doubled the size of its headquarters research facilities near Cincinnati, opened three new research laboratory buildings at branch plants and built a new General Office building. Overseas, it commenced manufacturing in six new plants and in three new countries.

FINANCIAL STATEMENTS

Attention is called to the financial statements included herein. Additional financial statements relating to prior years for both Clorox and Procter & Gamble are on file at the office of the Securities and Exchange Commission, Washington, D. C., and at the office of the Pacific Coast Stock Exchange, San Francisco, California, for Clorox, and at the office of the New York Stock Exchange, New York, New York, for Procter & Gamble.

D. RECOMMENDATION OF MANAGEMENT

ANALYSIS OF FAIRNESS OF EXCHANGE TRANSACTION

The terms of the Agreement were negotiated by the respective officers of Clorox and of Procter & Gamble by arm's length bargaining. In determining the basis or ratio of exchange and the relative fair and reasonable value of the property and assets of Clorox and of the common stock of Procter & Gamble, consideration was given to many factors, including comparative market prices, past earnings and prospective earning potentials, dividends and book values of the shares of both companies. The ratio arrived at was determined, as stated, by arm's length bargaining. J. Barth & Co., Investment Brokers, San Francisco, California, acted as advisors to the officers and Board of Directors of Clorox and have recommended that in their judgment the exchange transaction (and in particular the ratio agreed upon) is fair and equitable and in the best interests of Clorox and its stockholders.

There is no present affiliation between Clorox and Procter & Gamble and there has been no course of business between them.

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Reasons for Exchange Transaction

Clorox has for many years and is presently engaged in the manufacture and sale of a single product, a sodium hypochlorite bleach and disinfectant under the trade-mark "CLOROX." The Board of Directors of Clorox Chemical Co. has from time to time during the past several years had under consideration the manufacture and sale of an additional product or products, believing that the future of the Company would be greatly strengthened by diversification. It is believed that such diversification can be best obtained by an exchange of the Clorox property and assets for common stock of Procter & Gamble. The distribution of these shares to the Clorox stockholders in exchange for their present Clorox stock upon the dissolution and liquidation of Clorox will give Clorox stockholders an equity interest in a highly diversified business, as well as a continuing interest in the business of Clorox.

The shares of Procter & Gamble are listed on the New York Stock Exchange and the Cincinnati Stock Exchange, whereas the shares of Clorox are listed solely on the Pacific Coast Stock Exchange. Thus the Procter & Gamble shares which the Clorox stockholders will receive upon the liquidation of Clorox should have a much broader market than the present Clorox shares.

Clorox has effected some distribution of its product in foreign countries, but it finds that it cannot economically obtain any substantial volume of foreign business due to high freight rates, without the establishment of several manufacturing plants in foreign countries. Procter & Gamble has numerous plants in foreign countries and is in a position to manufacture Clorox at these plants and therefore merchandise Clorox in numerous foreign areas at a lower price and with a higher percentage of profit.

Recommendation of Board of Directors

The Board of Directors of Clorox is unanimously of the opinion that the proposed transaction is in the best interest of Clorox and its stockholders and that the terms of the Agreement are fair and equitable. It therefore recommends that you vote in favor of the transaction and the Plan of Reorganization for Clorox of which the exchange transaction is a part.

VOTING OF SHARES REPRESENTED BY PROXY

Shares represented at the Special Meeting by proxy will be voted as specified by the stockholder in the space provided therefor in the form of proxy enclosed. In the event the stockholder does not so specify, the proxies will vote for authorization of the proposed exchange transaction, the Plan of Reorganization, and the Agreement, including authorization for the officers and directors of Clorox to take any further action deemed necessary or desirable to make such exchange effective, including amendments to the Agreement and Plan of Reorganization.

PRESENTATION OF OTHER MATTERS AT SPECIAL MEETING

The management does not intend to present to the Special Meeting any business or proposal other than the matter described above. The management has not been informed and does not know that any other person intends to present any matter for action at the meeting. If any other matter, however, should properly come before the meeting, it is intended that the enclosed proxy will be voted in respect thereof in accordance with the best judgment of the proxies.

Dated: July 1, 1957.

By order of the Board of Directors.

EARL M. MATSON, *Secretary.*

53

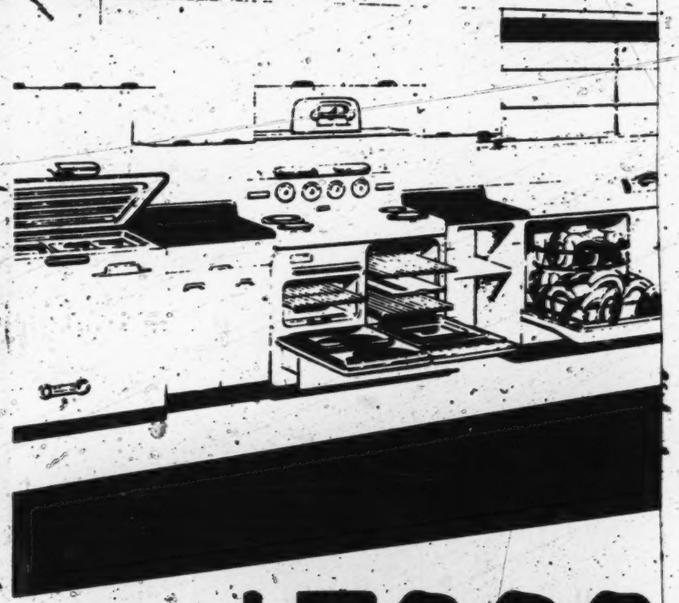
CX84 (A)

THIS IS A PROMOTION

YOU

CAN REALLY TIE IN WITH

a complete C

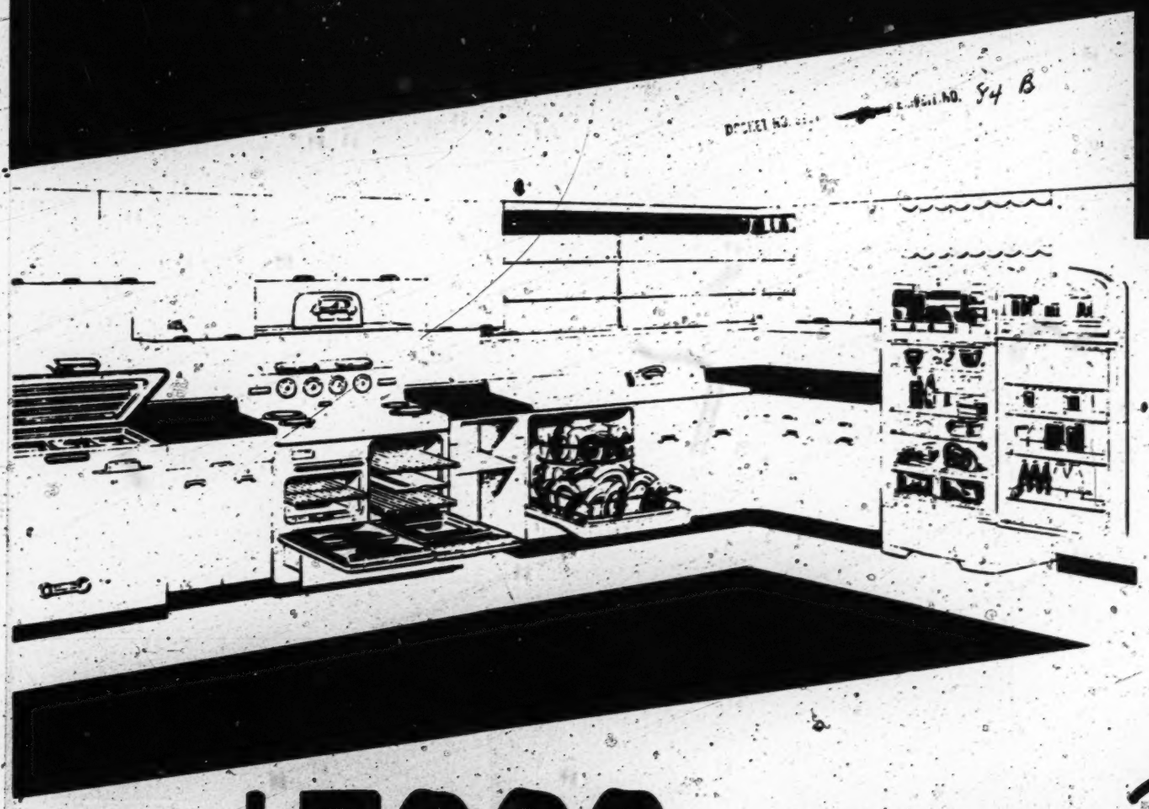


GRAND PRIZE $5000

FEDERAL TRADE COMMISSION
DOCKET NO. 8891 EXHIBIT NO. 84-A
Commission's Exhibit No. 84A-C
Contest on Camay Ivory Show
IN THE MATTER OF The Procter & Gamble Company
DATE 1-31-58 WITNESS
ACME REPORTING CO., Official Reporters
By

a complete CROSLEY KITCHEN

every day for 20 days as 1st prize in CAMAY-IVORY SNOW'S BIG CONTEST



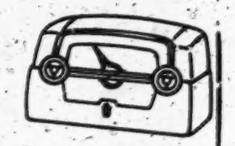
2nd PRIZES

3 CROSLEY HOME FREEZERS
EVERY DAY FOR 20 DAYS



3rd PRIZES

25 CROSLEY TABLE RADIOS
EVERY DAY FOR 20 DAYS



1st PRIZE WINNERS who send in Giant Ivory Snow box tops and Bath Size Camay wrappers receive an additional prize of $100.00 down payment on any Crosley TV or room air-conditioner.

GRAND PRIZE $5000 IN CASH TO BEST OF 1st PRIZE WINNERS

PLUS

$200 worth of groceries and a year's supply of CAMAY and IVORY SNOW to all 1st prize winners from winners' grocery stores.

and WE PAY THE COST!

115X

THIS IS WHAT YOU CAN DO

- Be sure to have plenty of IVORY SNOW and CAMAY on hand
- Contact your local Crosley dealer or distributor to obtain sample appliance prizes
- Build large displays of IVORY SNOW and CAMAY around prizes
- Feature this big contest in your ads

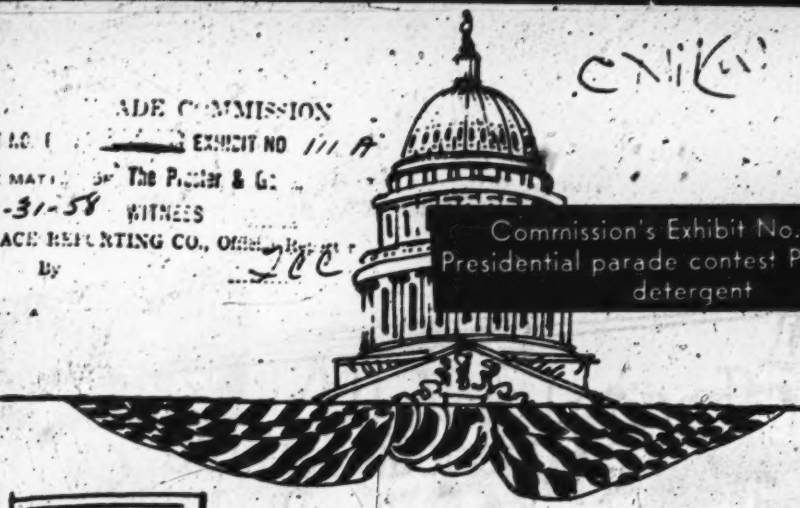
LET THIS PROMOTION HELP YOU START OFF A RECORD-BREAKING YEAR IN 1953!

FEDERAL TRADE COMMISSION
DOCKET NO. 6981

tly Bound

FEDERAL TRADE COMMISSION
DOCKET NO. [illegible] EXHIBIT NO 111A-1
IN THE MATTER OF The Procter & Gamble Co.
DATE 1-31-58 WITNESS
ACE REPORTING CO., Official Reporters
By JCC

Commission's Exhibit No. 111A-1
Presidential parade contest Procter soap detergent



Tie in with the Presidential Parade by featuring these Sponsoring Brands

117X

FEDERAL TRADE COMMISSION
DOCKET NO. 6001 EXHIBIT NO. 111-6



America's favorite washday Product!

The makers of 25 Automatic Washers recommend Tide



The only liquid dishwashing product that satisfies all your customers—



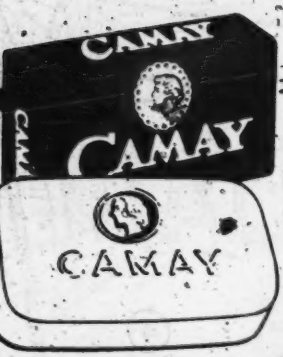
Those gals who want: The Sparkling Bottle Concentrated Detergent

Those who prefer: The Green Can Special Formula

3266

118X

DOCKET NO. 6511 — EXHIBIT NO.



All New "Loving Pink" CAMAY

New Gentle Pink Color!
Haunting New Fragrance!
New Pearl Pink Foil Wrappers!



New Oxydol

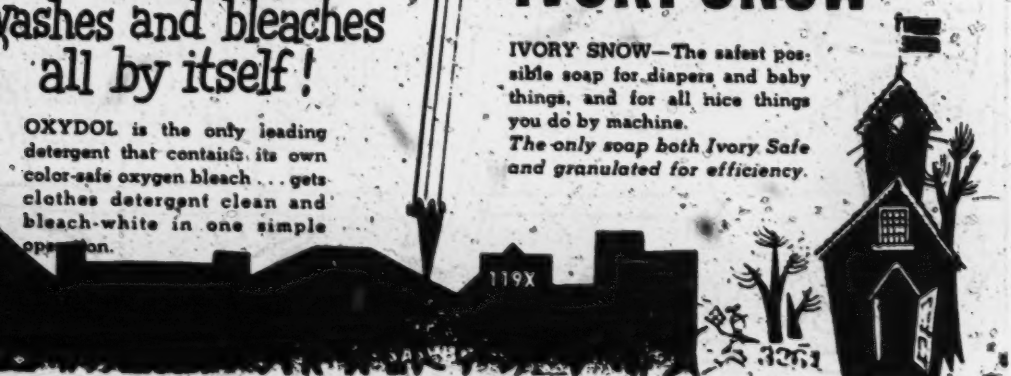
washes and bleaches all by itself!

OXYDOL is the only leading detergent that contains its own color-safe oxygen bleach . . . gets clothes detergent clean and bleach-white in one simple operation.



IVORY SNOW

IVORY SNOW—The safest possible soap for diapers and baby things, and for all nice things you do by machine.
The only soap both Ivory Safe and granulated for efficiency.



FEDERAL TRADE COMMISSION
DOCKET NO. 6911 EXHIBIT NO. 111 D

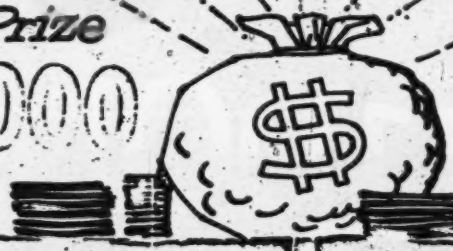


$100,000

IN PRESIDENTIAL PARADE PRIZES

FEDERAL TRADE COMMISSION
DOCKET NO. 8891 EXHIBIT NO. ///E

1st Prize
$20,000



2nd Prize
$10,000

(5) 3rd Prizes
FORD Country Squire Station Wagons

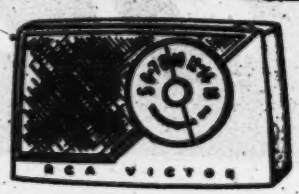


(30) 4th Prizes
Natural Mink Stoles
(worth $1500 each)



(200) 5th Prizes
3268

RCA Transistor 6" Pocket Size Portable Radios



121X

DOCKET NO. 9111 — EXHIBIT NO.

"what a parade!"



... but that's only half of it!

FREE ENTRY BLANKS will be mailed to your customers

and...

coupons .....too

122X

over

DOCKET NO. 6883 — EXHIBIT NO.

Look at this Lineup!



GET YOUR SHARE OF THIS BUSINESS—

Surveys made by FOOD TOPICS
(the national newspaper for food retailers)
show that —

OF ALL HOUSE-TO-HOUSE COUPONS REDEEMED—

43% WERE REDEEMED 1st WEEK
35% WERE REDEEMED 2nd WEEK

Be ready when coupons arrive—



DISPLAY YOUR ORDER
ASK CUSTOMERS FOR ALL OF THESE COUPONS



NUMBER CASES NEEDED

Number of Customers Redeeming Coupons	Approx. $ Volume Represented	BRANDS						
1000								
500								
200								
100								
50								
25								
10								

123X

FOR YOU TO
OFFER YOUR CUSTOMERS...

Bonus Prizes

FOR THE FIRST AND SECOND PRIZE WINNERS
IN THE PRESIDENTIAL PARADE

FEDERAL TRADE COMMISSION
DOCKET NO. 6911 [redacted] EXHIBIT NO. 111 H

A first-class trip to Europe for two on the U.S. Lines and 10 days in Europe (estimated cost $2,460)—or,

A first-class trip to Hawaii for two on the President Lines and 10 days in Hawaii (estimated cost $2,460)—or,



One-week vacation in Washington for an entire family (estimated cost $2,940 for a family of 5)—or,

2 years supply of groceries (equivalent to $2,500)—or,

Anything the winners want that can be purchased for $2,500—



$2,500 in cash

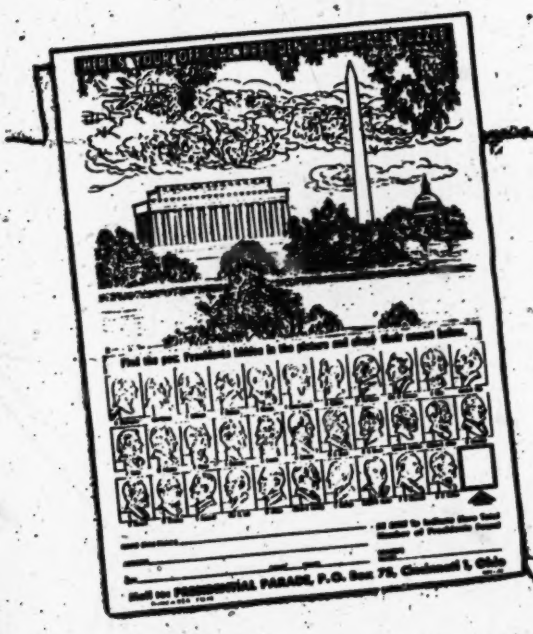
124X

The Presidential Parade

...is as easy as A B C

to enter and more fun than a school picnic





All your customers do is solve this puzzle using free entry blanks from your store.

125X

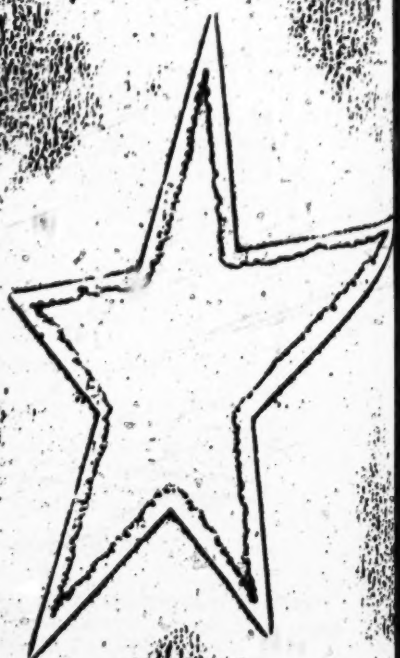
FEDERAL TRADE COMMISSION



...and—don't forget to VOTE in NOVEMBER!

Commission's Exhibit No. 153A-G
Brochure on Comet

a new star



BLAZING THE WAY

TO VOLUME FOR YOU

126X

Comet with CHLORINOL



A completely new and different kind of cleanser that will quickly be a top seller!

Here are the reasons

127X

Comet gets sinks and tubs CLEANER and WHITER than ANY OTHER leading cleanser

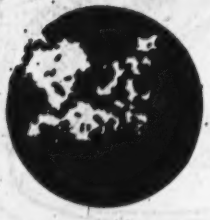


UNRETOUCHED PHOTOGRAPH

These photos show COMET'S terrific ability to bleach out stubborn food stains. Even when the competitive cleanser is used *10 times as long*, it cannot match COMET with Chlorinol.

Comet kills germs—as no other cleanser can

The left-hand picture shows typical household bacteria on a kitchen drain-board. Right-hand picture shows same area after cleaning with COMET—PROOF that COMET automatically disinfects as it cleans!



128X

BEFORE AFTER
UNRETOUCHED PHOTOMICROGRAPH
(Magnified 1000 times)


and . . . to be sure your customers
see Comet's superiority for themselves,
a free sample can of Comet
will be delivered
to their homes
Comet
129X

plus . . .

BIG NEWSPAPER ADS like this

"TERRIFIC" is the word for Comet

131X



PROCTER & GAMBLE'S NEW GREEN CLEANSER FORTIFIED WITH—

BLEACHES OUT STAINS WIPES OUT GERMS...

AS NO OTHER CLEANSER CAN!

Lady! What a cleanser! COMET will bleach your sinks and tubs whiter and cleaner than any other leading cleanser... of any kind. Even the odor, the fresh clean smell tells you that COMET is different. You see, COMET is fortified with Chlorinol*. This exclusive new ingredient gives you all the bleaching and stain-removing advantages of the most effective form of chlorine . . . gives your all the disinfecting advantages, too.

Tests prove that COMET with Chlorinol* kills up to 99% of household germs—something no other cleansing powder of any kind can do! COMET even looks different—it's green! Foams green, too! There's never been a cleanser like COMET before! You won't believe what happens until you see it with your own eyes. So-o-o... better try COMET today!

*Chlorinol is Procter & Gamble's trade mark for a special chlorine bleaching, disinfecting and cleansing agent

Comet Cleanser, *with Chlorinol**... outdates... outshines... outcleans them all!

BLANK

PAGE

plus

this coupon

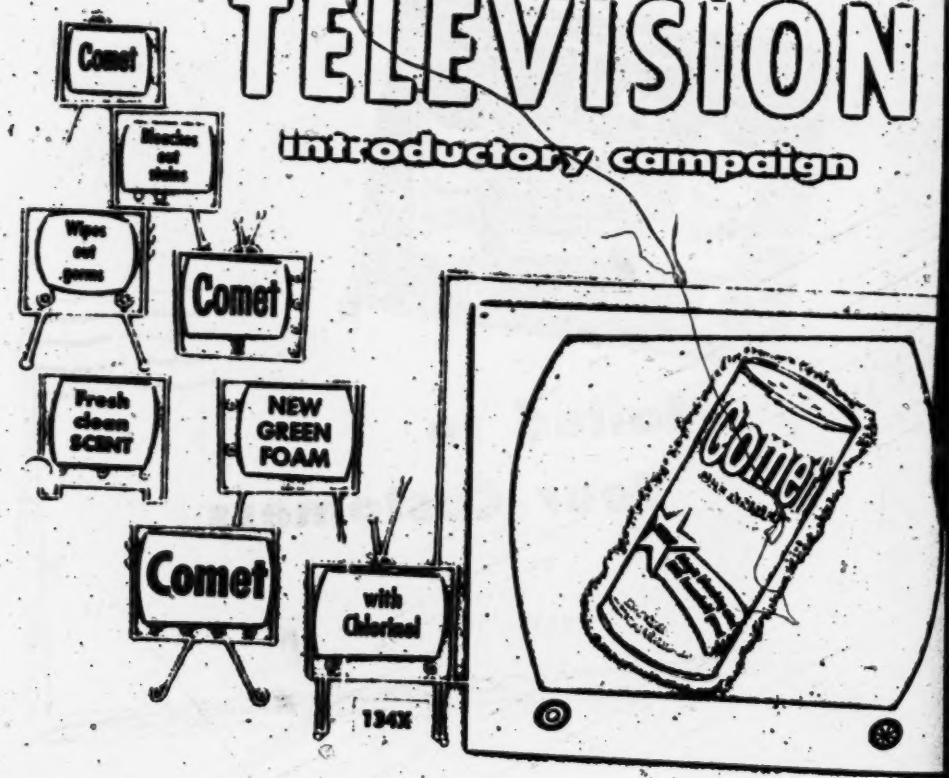


Mailed to
Your Customers

133X

We are going to back Comet
with STRONG ADVERTISING
and PROMOTION SUPPORT

TELEVISION
introductory campaign



ightly Bound

BLANK

PAGE

CLOROX



America's largest-selling bleach and household disinfectant!

Of all Household Supplies, liquid bleach has the most house-cleaning uses! And of all bleaches, Clorox is America's largest seller . . . with a stock turn that's one of the fastest in the entire grocery field!

Clorox is a proved traffic-builder, one you can count on to attract customers to other big-margin Household Supplies . . . to boost business throughout your store!

Use Clorox as the "hub" of your big money-making Spring House-cleaning Promotion! Feature this popular repeat-staple in your advertising, in mass and related-item displays, and in well-stocked shelves. It pays!

Cash in on this giant CLOROX *Spring House-cleaning promotion*

[redacted]

[redacted]

CK-214(B)

[redacted]

[redacted]

to cash in on this [redacted] of a Springtime promotion...

SPRING

HOUSE-CLEANING PROMOTION

[redacted] of all your profitable Household Supplies!

[redacted]



Feature America's No. 1 House-cleaning Aid!

BLANK

PAGE

in honor of...

Commission's Exhibit No. 376 A
Wife Saver Sale

the most important business woman in your life

The American Housewife

we present the . . .

Wife-Saver Sale

sponsored by her favorite Wife-Saving brands



FEDERAL TRADE COMMISSION
DOCKET NO. 6331 EXHIBIT NO. 376 A
IN THE MATTER OF The Procter & Gamble Company
DATE 4-3-58 WITNESS
ACE REPORTING CO. Official Reporter
By ACC

137X

OXYDOL
CAMAY
IVORY BAR SOAP
JOY
SPIC and SPAN

to make this sale the talk of the town, we'll offer glamorous . . .

Wife-Saver Prizes

Grand Total

$60,000

FED... ...DE COMMISSION
DOCKET NO. 8861 EXHIBIT NO. 275-B



First Prize

$20,000 CASH

Next Four Prizes

tylish 1958 Plymouth **Station Wagons**

Next 55 Prizes

RCA Color Television Sets

138X *not only that, you can offer your own..*

Wife-Saver Bonus Prizes

FEDERAL TRADE COMMISSION
DOCKET NO. 8901 EXHIBIT NO. 371e



Maid Service for a year (up to $2,500)

or

Two years' supply of "WIFE-SAVING" groceries ($2,500)

or

$2500 WIFE-SAVER Checking Account

or

WIFE-SAVER trip to Paris (for two up to $2,500)

or

WIFE-SAVER trip to Hawaii (for two up to $2,500)

or

Anything $2,500 will buy

We'll stand the cost!

Bonus prizes will be awarded to any of the first five national prize winners who write your name on their entry blank . . .

139X

And it's so easy to enter the . .

Wife-Saver Contest



All Mrs. Housewife does is pick up an entry from your store:

Complete a simple four line jingle — so easy!

Since I keep house the "Wife-Saver" way
There's lots more time for family play.
I've cut my household work in two

FEDERAL TRADE COMMISSION
DOCKET NO. 6981 EXHIBIT NO. 179 D

. . . and she sends it in with proof of purchase from

any 2 Wife-Saver Brands

She'll hear and see plenty about the "WIFE-SAVER" CONTEST through

powerful

Wife-Saver Advertising

Wife-Saver messages by the million on . . .

★ "As the World Turns" ★ "Search for Tomorrow"
★ "Guiding Light" ★ "Edge of Night"

By the ton through print advertising

140X



Yes . .

ightly Bound

$60,000 Wife-Saver Contest

will move

BIG EXTRA QUANTITIES OF THESE "WIFE-SAVER" BRANDS

but

FEDERAL TRADE COMMISSION
DOCKET NO. 6501 EXHIBIT NO. 379 E

to make the

Wife-Saver Sale

the biggest promotion event in 1957



here are Terrific Wife-Saver Specials . .

141X

Wife-Saver Sale

DOCKET NO. 6981 EXHIBIT NO. 279 0

7¢ OFF

On Popular Wife-Saver Brands.

plus

— Powerful Television and Newspaper Wife-Saver Advertising.

— Outstanding Wife-Saver Display Material.

— A $60,000 Wife-Saver Contest.

— Wife-Saver Bonus Prizes for you to offer.

This all adds up to

a sure-fire promotion winner!

142X

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Commission's Exhibit No. 321
Study of brands of washing products used in urban and rural homes dated April 22, 1957

BRANDS OF WASHING PRODUCTS USED

IN URBAN AND RURAL HOMES

U.S.

This study was made to ascertain the products used in urban and rural homes for:

Face and Hands
Bath
Dishwashing
Regular family laundry
Fine fabrics by hand
Fine fabrics in machine
Diapers
Baby clothes
Linoleum
Extra dirty hands

Information on the use of bleaches and bluing and the brands of bar soap kept at the kitchen sink was also obtained.

This study represents a repetition of similar studies made in 1953 and 1955. Where available, figures from the previous studies are included in this report.

Method

Interviews were made by the Psychological Corporation. Each woman was questioned as to what she herself used for each of the purposes. Thus, the information does not necessarily cover the entire household, particularly those tables showing brands used for face and hands and bath.

It should be remembered that any special promotion occurring at the time this study was made or immediately preceding it is reflected in the tables.

Date of Interviewing

January 7 through February 15, 1957.

The previous studies were also made in the January-February period.

Interviews

Four thousand nine hundred seventy-seven (4,977) interviews were made with housewives and distributed in such a manner as to be reasonably representative of the English-speaking population of the U.S. Approximately two-thirds of the interviews were made in urban homes and one-third in rural homes (both farm and small towns).

NOTE: Detailed breakdown information will be issued in supplementary reports. Breakdown figures will not always check with totals due to fractional percentages.

143X

April 22, 1957

Market Research Department
#57141

FEDERAL TRADE COMMISSION
DOCKETED — 321
IN THE MATTER OF
DATE 2-4-58
ACE REPORTING CO., OMAHA
By

3698

Brands used - FACE AND HANDS

"What product or products have you yourself used for washing your face an hands during the past 4 weeks?"

Base - total interviews --	COMBINED URBAN & RURAL 1957 (4977) %	1955 (4978) %	1953 (5000) %
Ivory	32	35	33
Lux	25	22	24
Palmolive	17	21	24
Camay	21	19	18
Sweetheart	7	9	11
Cashmere Bouquet	6	8	8
Woodbury	6	7	7
Lifebuoy	9	10	6
Swan	1	2	1
Dial	14	13	9
Lava	3	3	3
Misc. toilet soap	13	11	12
	154	160	156

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Brands used - FACE AND HANDS

Base - total interviews —	URBAN 1957 (3189) %	URBAN 1955 (3195) %	URBAN 1953 (3320) %	RURAL 1957 (1788) %	RURAL 1955 (1783) %	RURAL 1953 (1680) %
Ivory	35	39	34	27	28	29
Lux	25	21	24	26	22	24
Palmolive	17	20	24	17	22	23
Camay	21	18	16	23	21	21
Sweetheart	7	10	11	7	8	13
Cashmere Bouquet	6	8	8	6	8	9
Woodbury	6	7	9	6	7	4
Lifebuoy	7	9	5	11	10	8
Swan	1	2	1	1	1	1
Dial	15	14	9	11	12	9
Lava	2	2	1	5	4	6
Misc. toilet soap	13	11	13	13	12	11
	155	161	155	153	155	158

-4-

Brands used - BATH

"What product or products have you yourself used for bathing during the past 4 weeks?"

Some women mentioned more than one product.

	COMBINED URBAN & RURAL		
Base - total interviews --	1957 (4977) %	1955 (4978) %	1953 (5000) %
Ivory	28	29	31
Lux	21	18	21
Palmolive	14	17	20
Camay	18	16	15
Sweetheart	6	8	10
Cashmere Bouquet	6	7	7
Woodbury	5	5	6
Lifebuoy	11	13	10
Swan	1	1	1
Dial	16	16	12
Lava	1	1	1
Misc. toilet soap	12	9	10
Package (Syn. or Soap)	2	1	1
	141	141	145

htly Bound

Brands used - BATH

Base - total interviews —	URBAN 1957 (3189) %	URBAN 1955 (3195) %	URBAN 1953 (3320) %	RURAL 1957 (1788) %	RURAL 1955 (1783) %	RURAL 1953 (1680) %
Ivory	31	33	33	24	24	28
Lux	20	18	21	22	19	21
Palmolive	14	16	20	13	18	21
Camay	18	15	14	20	17	18
Sweetheart	6	8	10	6	8	11
Cashmere Bouquet	6	7	7	5	6	7
Woodbury	5	5	7	5	5	4
Lifebuoy	10	13	8	13	14	12
Swan	1	2	1	1	1	1
Dial	17	17	12	13	14	11
Lava	1	*	*	1	1	2
Misc. toilet soap	12	8	11	12	9	8
Synthetic package	2	1	1	2	2	1
	143	143	145	137	138	145

*Less than .5%.

Brands used - DISHWASHING - BY HAND

"What product or products have you used for washing dishes (by hand) during the past 4 weeks?"

Some women mentioned more than one product.

	COMBINED URBAN & RURAL		
	1957	1955	1953
Base - total washing dishes by hand	(4875)	(4890)	(4856)
- % of total interviews	98%	98%	96%
	%	%	%
Tide	23	27	30
Cheer	11	12	12
Fab	7	12	11
Surf	2	3	5
Oxydol	3	3	5
Silver Dust (Syn.)	2	-	-
Breeze	2	3	2
Rinso (Syn.)	2	1	-
Misc. HD synthetic	2	1	1
	54	62	66
Joy	17	12	11
Liquid Lux	15	9	-
Glim	1	1	1
Liquid Vel	4	-	-
Wisk	2	-	-
Liquid Trend	2	-	-
Chiffon Liquid	1	-	-
Misc. liquid	1	-	-
	43	22	12
Dus	3	4	7
Rinso (Soap)	2	2	5
Super Suds	1	1	2
Silver Dust (Soap)	-	2	2
American Family Flakes	-	*	1
White King Granules	1	1	1
Misc. HD pkg. soap	1	1	3
	8	11	21
Ivory Flakes	4	5	6
Ivory Snow	4	6	5
Lux Flakes	1	2	2
Chiffon Flakes	-	*	1
	9	13	14
Dreft	5	5	8
Vel	5	7	7
Trend	2	2	1
Misc. LD synthetic	1	1	*
	13	15	16
Ivory Soap	7	10	11
Swan	-	*	1
Octagon	1	1	1
Homemade soap	1	1	1
Misc. laundry soap	1	*	1
	10	12	15
	137	135	144

*Less than .5%.

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Brands used - DISHWASHING - BY HAND

	URBAN			RURAL		
	1957	1955	1953	1957	1955	1953
Base - total washing dishes by hand --	(3107)	(3122)	(3195)	(1768)	(1768)	(1661)
- % of total interviews --	98%	98%	95%	99%	99%	98%
	%	%	%	%	%	%
Tide	22	25	31	23	29	28
Cheer	11	12	13	11	12	10
Fab	6	11	9	9	13	13
Surf	2	4	6	1	3	5
Oxydol	3	3	4	4	3	6
Silver Dust (Syn.)	1	-	-	3	-	-
Breeze	2	3	2	3	4	3
Rinso (Syn.)	2	2	-	2	1	-
Misc. HD synthetic	2	2	1	2	-	2
	51	62	66	58	65	67
Joy	17	11	11	18	12	10
Liquid Lux	17	10	-	13	7	-
Glim	1	1	1	1	1	*
Liquid Vel	4	-	-	4	-	-
Wisk	2	-	-	2	-	-
Liquid Trend	1	-	-	2	-	-
Chiffon Liquid	1	-	-	-	-	-
Misc. liquid	1	-	-	2	-	-
	44	22	12	42	20	10
Dus	3	4	6	3	3	10
Rinso (Soap)	2	2	6	1	2	4
Super Suds	1	*	1	1	1	4
Silver Dust (Soap)	-	1	1	-	3	5
American Family Flakes	-	*	1	-	*	*
White King Granules	1	1	1	1	1	1
Misc. HD pkg. soap	1	1	3	1	2	2
	8	9	19	7	12	26
Ivory Flakes	5	6	6	3	4	4
Ivory Snow	5	7	7	3	4	2
Lux Flakes	2	3	3	1	1	1
Chiffon Flakes	-	*	1	-	-	*
	12	16	17	7	9	7
Dreft	5	4	8	6	7	8
Vel	4	7	7	6	7	7
Trend	2	2	2	2	2	1
Misc. LD synthetic	1	1	*	2	1	*
	12	14	17	16	17	16
Ivory Soap	8	11	11	6	8	12
Swan	-	1	1	-	*	1
Octagon	1	*	*	1	1	2
Homemade soap	1	*	*	1	1	2
Misc. laundry soap	1	*	1	1	1	1
	11	12	13	9	11	18
	138	135	144	139	134	144

*Less than .5%.

Brands used - FINE FABRICS - By Hand & By Machine

"What product or products have you used for washing silks, fine rayons, nylons and woolens by hand (by machine) during the past 4 weeks?"

Some women mentioned more than one product.

NOTE: This information was not obtained on this basis in the previous studies.

	COMBINED URBAN & RURAL	
Base - total interviews —	1957 By Hand (4977) %	1957 By Machine (4977) %
Tide	15	17
Cheer	8	8
Fab	6	5
Surf	1	1
Oxydol	2	3
All	-	3
Silver Dust (Syn.)	1	1
Breeze	1	1
Rinso (Syn.)	1	2
Dash	1	2
Ad	-	1
Misc. HD synthetic	2	1
	38	45
Joy	1	-
Liquid Lux	6	1
Liquid Vel	1	-
Wisk	1	1
Misc. liquid	2	1
	11	3
Dus	2	2
Rinso (Soap)	1	1
White King Granules	-	1
Misc. HD pkg. soap	3	2
	6	6
Ivory Flakes	14	4
Ivory Snow	12	4
Lux Flakes	14	3
Misc. LD pkg. soap	1	-
	41	11
Dreft	5	2
Vel	4	1
Woolite	2	-
Trend	1	-
Misc. LD synthetic	1	-
	13	3
Ivory Soap	10	-
Misc. laundry soap	1	-
Misc. toilet soap	3	-
	14	-
Do not wash by hand (by machine)	4	44
	127	112

ghtly Bound

Brands used - FINE FABRICS - By Hand & By Machine - 1957

Base - total interviews —	BY HAND Urban (3189) %	BY HAND Rural (1788) %	BY MACHINE Urban (3189) %	BY MACHINE Rural (1788) %
Tide	14	16	16	18
Cheer	8	8	7	9
Fab	4	8	3	8
Surf	1	1	1	1
Oxydol	1	3	2	4
All	-	-	4	2
Silver Dust (Syn.)	1	2	-	-
Breeze	1	2	1	2
Rinso (Syn.)	2	1	2	2
Dash	1	1	2	1
Ad	-	-	1	1
Misc. HD synthetic	2	1	1	1
	35	43	40	49
Joy	1	1	-	-
Liquid Lux	6	6	1	1
Liquid Vel	1	2	-	-
Wisk	1	-	1	1
Misc. liquid	2	2	-	1
	11	11	2	3
Duz	2	2	2	2
Rinso (Soap)	1	1	1	1
White King Granules	-	-	1	1
Misc. HD pkg. soap	3	3	2	2
	6	6	6	6
Ivory Flakes	15	11	5	3
Ivory Snow	15	8	5	3
Lux Flakes	16	11	4	2
Misc. LD pkg. soap	1	-	-	-
	47	30	14	8
Dreft	5	6	1	2
Vel	3	5	1	2
Woolite	3	1	-	-
Trend	1	1	-	-
Misc. LD synthetic	1	1	-	-
	13	14	2	4
Ivory Soap	11	10	-	-
Misc. laundry soap	1	1	-	-
Misc. toilet soap	3	4	-	-
	15	15	-	-
Do not wash by hand (by machine)	5	4	46	42
	132	123	110	112

Where do regular family laundry

"Is your regular family washing done here at home or sent out, or where is it done?"

Some women do their washing at home and also send it out.

	COMBINED URBAN & RURAL		
	1957	1955	1953
Base - total interviews --	(4977)	(4978)	(5000)
	%	%	%
Regular family washing done:			
At home	90	89	85
With apartment house facilities	2	1	3
By commercial laundry	12	12	17
By laundress	1	1	2
By self-service laundry	4	3	4
	109	106	111

Use of bluing/bleach in connection with regular family laundry

"Have you used any bluing/bleach in connection with your regular family washing during the past 4 weeks?"

	COMBINED URBAN & RURAL		
	1957	1955	1953
Base - total doing family washing --	(4531)	(4484)	(4386)
- % of total interviews --	52%	90%	88%
	%	%	%
Use bluing for regular laundry	30	36	45
Do not use bluing	70	64	55
	100	100	100
Use bleach for regular laundry	75	75	73
Do not use bleach	25	25	27
	100	100	100

ghtly Bound

Where do regular family laundry

	URBAN			RURAL		
Base - total interviews --	1957 (3189) %	1955 (3195) %	1953 (3320) %	1957 (1788) %	1955 (1783) %	1953 (1680) %
Regular family washing done:						
At home	86	86	81	97	94	93
With apartment house facilities	3	2	5	-	-	-
By commercial laundry	17	17	23	4	4	5
By laundress	1	1	2	1	2	3
By self-service laundry	5	3	5	2	2	2
	112	109	116	104	102	103

Use of bluing/bleach in connection with regular family laundry

	URBAN			RURAL		
Base - total doing family washing --	1957 (2815)	1955 (2802)	1953 (2815)	1957 (1716)	1955 (1682)	1953 (1571)
- % of total interviews --	89%	88%	86%	97%	94%	93%
	%	%	%	%	%	%
Use bluing for regular laundry	28	33	43	33	39	50
Do not use bluing	72	67	57	67	61	50
	100	100	100	100	100	100
Use bleach for regular laundry*	75	75	72	75	73	74
Do not use bleach	25	25	28	25	27	26
	100	100	100	100	100	100

*Additional information on bleach usage is shown on pages 24-26.

Brands used - REGULAR LAUNDRY

"What product or products have you used for doing your regular family washing during the past 4 weeks?"

Some women mentioned more than one product.

	COMBINED URBAN & RURAL		
	1957	1955	1953
Base - total doing family washing --	(4531)	(4484)	(4386)
- % of total interviews --	92%	90%	88%
	%	%	%
Tide	39	38	41
Cheer	17	17	14
Fab	11	14	10
Surf	2	4	4
Oxydol	8	8	13
All	7	9	5
Silver Dust (Syn.)	2	-	-
Breeze	2	3	1
Rinso (Syn.)	6	4	-
Dash	4	-	-
Ad	2	-	-
Misc. HD syn.	3	2	1
	103	99	89
Wisk	2	-	-
Duz	5	7	11
Rinso (Soap)	3	6	12
Super Suds	1	1	3
Silver Dust (Soap)	-	2	3
American Family Flakes	-	1	1
White King Granules	1	3	4
Misc. HD pkg. soap	5	4	4
	15	24	38
Ivory Flakes	2	2	2
Ivory Snow	2	2	3
Lux Flakes	1	1	1
	5	5	6
Dreft	1	1	2
Vel	1	1	1
	2	2	3
Ivory Soap	1	1	2
Fels	1	1	*
Octagon	1	1	1
Homemade soap	1	2	2
Misc. laundry soap	1	*	1
	5	5	6
	132	135	142

*Less than .5%.

146X*

ghtly Bound

Brands used - REGULAR LAUNDRY

	URBAN			RURAL		
Base - total doing family washing --	1957 (2815)	1955 (2802)	1953 (2815)	1957 (1716)	1955 (1682)	1953 (1571)
- % of total interviews in group --	89%	88%	86%	97%	94%	93%
	%	%	%	%	%	%
Tide	39	37	41	39	39	40
Cheer	17	18	16	18	16	10
Fab	9	13	9	14	16	11
Surf	3	5	5	2	4	3
Oxydol	8	8	11	9	9	15
All	9	11	7	5	4	2
Silver Dust (Syn.)	1	-	-	4	-	-
Breeze	2	2	1	3	3	2
Rinso (Syn.)	7	5	-	4	3	-
Dash	5	-	-	3	-	-
Ad	2	-	-	1	-	-
Misc. HD syn.	4	3	2	2	1	*
	106	102	92	104	95	83
Wisk	3	-	-	1	-	-
Dus	4	7	10	5	7	12
Rinso (Soap)	3	6	12	2	5	10
Super Suds	1	1	2	1	2	5
Silver Dust (Soap)	-	1	1	-	4	5
American Family Flakes	-	1	1	-	1	*
White King Granules	1	3	4	1	2	3
Misc. HD pkg. soap	5	4	5	3	5	4
	14	23	35	12	26	39
Ivory Flakes	2	3	3	1	1	1
Ivory Snow	3	3	3	1	1	1
Lux Flakes	1	1	2	*	1	*
	6	7	8	2	3	2
Dreft	1	1	2	1	1	1
Vel	1	2	1	1	1	1
	2	3	3	2	2	2
Ivory Soap	1	1	2	1	1	2
Fels	1	1	1	1	1	*
Octagon	-	*	*	1	1	3
Homemade soap	1	1	1	2	4	4
Misc. laundry soap	1	*	*	1	1	2
	4	3	4	6	8	11
	135	138	142	127	134	137

*less than .5%.

Make of electric washing machine

"What is the name of the washing machine you use?"

"Is that a regular type washing machine or one of the automatic type machines?"

	COMBINED URBAN & RURAL	
	1957	1955
Base - total interviews —	(4977)	(4978)
	%	%
Non-automatic:		
Maytag	15	15
Kenmore	6	6
Easy	3	6
General Electric	3	4
Speed Queen	4	4
Thor	1	3
ABC	2	2
Montgomery Ward	1	1
Apex	2	2
Blackstone	1	1
Norge	1	1
Whirlpool	1	1
Misc. non-automatic machines	7	8
Not know make	2	2
	49	56
Automatic:		
Bendix - side	4	4
Bendix - top	2	2
Westinghouse Laundromat	3	2
Kenmore	6	4
General Electric	3	2
Maytag	4	3
Frigidaire	2	2
Thor	1	1
Whirlpool	3	1
Easy	1	-
Hotpoint	1	-
Norge	1	1
Misc. automatic machines	3	3
Not know make	-	-
	34	25
	83	81
Do regular laundry by hand	9	9
Not do regular laundry - all sent out	8	10
	100	100

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Make of electric washing machine

	URBAN		RURAL	
Base - total interviews —	1957 (3189) %	1955 (3195) %	1957 (1788) %	1955 (1783) %
Non-automatic:				
Maytag	10	10	25	22
Kenmore	5	6	7	6
Easy	4	6	3	5
General Electric	2	4	4	5
Speed Queen	4	3	6	6
Thor	1	3	1	2
ABC	1	2	2	2
Montgomery Ward	-	1	2	2
Apex	2	2	2	2
Blackstone	1	1	1	2
Norge	1	1	1	2
Whirlpool	1	1	1	1
Misc. non-automatic machines	5	6	10	11
Not know make	1	2	2	2
	38	48	67	70
Automatic:				
Bendix - side	5	5	2	2
Bendix - top	2	3	1	1
Westinghouse Laundromat	4	3	2	2
Kenmore	7	5	4	2
General Electric	5	3	2	1
Maytag	4	3	2	2
Frigidaire	2	2	2	1
Thor	1	2	1	1
Whirlpool	4	2	1	1
Easy	1	-	-	-
Hotpoint	2	-	1	-
Norge	2	1	1	-
Misc. automatic machines	3	2	2	1
	42	31	21	14
	80	79	88	84
Do regular laundry by hand	9	9	9	10
Not do regular laundry - all sent out	11	12	3	6
	100	100	100	100

Brands used - BABY CLOTHES

"What product or products have you used for washing baby clothes during the past 4 weeks?"

Some women mentioned more than one product.

	COMBINED URBAN & RURAL		
	1957	1955	1953
Base - total having children 2 yrs. old or younger —	(949)	(901)	(950)
- % of total interviews —	19%	18%	19%
	%	%	%
Tide	26	25	27
Cheer	12	11	9
Fab	7	10	7
Surf	1	2	3
Oxydol	5	4	5
All	4	5	3
Breeze	2	3	2
Rinso (Syn.)	2	3	-
Dash	3	-	-
Ad	1	-	-
Misc. HD synthetic	2	1	2
	65	64	58
Wisk	1	-	-
Misc. liquid	1	-	-
Duz	3	3	6
Rinso (Soap)	2	2	4
Super Suds	1	*	2
Silver Dust	1	1	2
American Family Flakes	-	*	1
White King Granules	1	1	2
Misc. HD pkg. soap	4	2	4
	12	10	21
Ivory Flakes	10	8	11
Ivory Snow	16	17	13
Lux Flakes	3	2	6
	29	27	30
Dreft	2	1	2
Vel	1	1	2
Trend	1	-	-
Misc. LD syn.	1	-	-
	5	2	4
Ivory Soap	4	7	9
Fels	-	*	*
Octagon	-	1	1
Misc. laundry soap	1	*	*
	5	8	10
	118	111	123

*Less than .5%.

ightly Bound

rands used - BABY CLOTHES

	URBAN			RURAL		
	1957	1955	1953	1957	1955	1953
Base - total having children 2 yrs. old or younger —	(604)	(598)	(633)	(345)	(303)	(317)
- % of total interviews —	19%	19%	19%	19%	17%	19%
	%	%	%	%	%	%
Tide	25	24	28	29	27	23
Cheer	10	10	9	14	13	10
Fab	5	7	5	11	15	13
Surf	1	2	3	2	2	1
Oxydol	3	3	5	8	5	6
All	6	7	4	2	3	2
Breeze	2	3	2	3	4	3
Rinso (Syn.)	2	3	-	2	3	-
Dash	3	-	-	2	-	-
Ad	1	-	-	-	-	-
Misc. HD synthetic	2	2	2	1	*	2
	60	61	58	74	72	60
Wisk	2	-	-	1	-	-
Misc. liquid	1	-	-	1	-	-
Dus	3	4	5	2	3	6
Rinso (Soap)	2	3	4	1	1	4
Super Suds	1	-	1	1	1	3
Silver Dust	1	1	1	3	2	3
American Family Flakes	-	1	1	-	1	*
White King Granules	1	1	2	1	1	2
Misc. HD pkg. soap	5	1	4	3	3	2
	13	11	18	11	12	20
Ivory Flakes	11	10	12	9	6	9
Ivory Snow	19	21	17	10	9	5
Lux Flakes	3	3	6	1	2	7
	33	34	35	20	17	21
Dreft	2	1	2	2	2	3
Vel	1	1	1	1	1	2
Trend	1	-	-	-	-	-
Misc. LD synthetic	1	-	-	-	-	-
	5	2	3	3	3	5
Ivory Soap	4	7	9	4	7	9
Fels	-	*	1	-	-	*
Octagon	-	*	*	-	1	2
Misc. laundry soap	-	*	*	1	*	1
	4	7	10	5	8	12
	118	115	124	115	112	118

ess than .5%.

146X 13

Brands used - DIAPERS

"What product or products have you used for washing diapers during the past 4 weeks?"

Some women mentioned more than one product.

	COMBINED URBAN & RURAL		
	1957	1955	1953
Base - total having children 2 yrs. old or younger --	(949)	(901)	(950)
- % of total interviews --	19%	18%	19%
	%	%	%
Tide	24	24	23
Cheer	10	12	8
Fab	6	9	7
Surf	1	2	2
Oxydol	4	4	5
All	4	5	3
Breeze	2	3	2
Rinso (Syn.)	2	2	-
Dash	3	-	-
Ad	1	-	-
Misc. HD synthetic	2	1	2
	59	62	52
Wisk	1	-	-
Misc. liquid	2	-	-
Duz	2	3	5
Rinso (Soap)	1	2	4
Super Suds	1	*	2
Silver Dust	2	1	2
American Family Flakes	-	1	1
White King Granules	1	1	2
Misc. HD pkg. soap	7	2	5
	14	10	21
Ivory Flakes	10	7	8
Ivory Snow	14	16	10
Lux Flakes	2	3	4
	26	26	22
Dreft	2	1	1
Vel	1	1	1
Misc. LD synthetic	1	-	-
	4	2	2
Ivory Soap	4	6	7
Octagon	-	1	1
Misc. laundry soap	1	*	*
	5	7	8
Use diaper service or children no longer wear diapers	12	9	15
	123	116	120

*Less than .5%.

ghtly Bound

rands used - DIAPERS

	URBAN			RURAL		
	1957	1955	1953	1957	1955	1953
Base - total having children 2 yrs. old or younger —	(604)	(598)	(633)	(345)	(303)	(317)
- % of total interviews —	19%	19%	19%	19%	17%	19%
	%	%	%	%	%	%
Tide	22	23	23	28	26	24
Cheer	8	11	7	14	14	9
Fab	4	7	4	10	15	11
Surf	1	2	3	1	3	1
Oxydol	3	3	5	6	6	5
All	5	6	3	2	3	2
Breeze	2	3	2	2	3	3
Rinso (Syn.)	2	2	-	2	2	-
Dash	3	-	-	2	-	-
Ad	1	-	-	-	-	-
Misc. HD synthetic	3	1	2	1	1	2
	54	58	49	68	73	57
Wisk	1	-	-	1	-	-
Misc. liquid	1	-	-	2	-	-
Dus	3	3	4	2	3	7
Rinso (Soap)	2	2	4	1	1	4
Super Suds	1	-	1	1	*	3
Silver Dust	1	1	1	-	2	3
American Family Flakes	-	1	1	-	1	*
White King Granules	1	1	2	1	*	2
Misc. HD pkg. soap	9	2	6	4	3	3
	17	10	19	9	10	22
Ivory Flakes	10	8	8	10	6	8
Ivory Snow	17	20	13	10	9	4
Lux Flakes	3	3	4	1	2	4
	30	31	25	21	17	16
Dreft	1	1	1	2	2	1
Vel	1	1	1	1	1	1
Misc. LD synthetic	1	-	-	1	-	-
	3	2	2	4	3	2
Ivory Soap	3	6	7	4	7	8
Octagon	-	*	*	-	1	2
Misc. laundry soap	-	*	*	2	*	1
	3	6	7	6	8	11
Use diaper service or child no longer wears diapers	14	11	19	8	5	9
	123	118	121	119	116	117

ess than .5%.

Brands used - LINOLEUM

"What product or products have you used for washing or scrubbing linoleum during the past 4 weeks?" Some women mentioned more than one product.

	COMBINED URBAN & RURAL		
	1957	1955	1953
Base - total having linoleum --	(4728)	(4787)	(4865)
- % of total interviews --	95%	97%	97%
	%	%	%
Spic & Span	32	29	23
Soilax	4	4	3
Perfex	1	2	1
Oakite	1	1	1
Misc. powder cleaners	1	2	8
	39	38	36
Tide	21	22	25
Cheer	8	8	6
Fab	6	7	6
Surf	1	2	3
Oxydol	3	3	5
All	1	1	1
Breeze	2	2	1
Rinso (Syn.)	2	1	-
Misc. HD synthetic	2	1	1
	46	47	48
Dus	2	3	6
Rinso (Soap)	2	3	5
Super Suds	1	1	2
Silver Dust	1	1	2
American Family Flakes	-	-	1
White King Granules	1	1	1
Misc. HD soap	2	1	2
	9	10	19
Ivory Flakes	1	2	2
Ivory Snow	1	1	1
Lux Flakes	-	1	1
	2	4	4
Dreft	1	1	2
Vel	1	2	2
Trend	1	1	1
	3	4	5
Ivory Soap	2	3	4
Fels	1	1	2
Homemade soap	-	1	1
Misc. laundry soap	1	2	2
	4	7	9
Light duty liquids	2	1	1
Scouring powders	7	6	5
Water softeners	1	1	-
Ammonia, bleaches, disinfectants	9	5	3
Soft soap	1	1	-
Misc. liquid linoleum cleaners	7	6	-
	27	20	9
	130	130	130

146X [illegible]

Tightly Bound

Brands used - LINOLEUM

Base - total having linoleum --	URBAN 1957 (3042) %	URBAN 1955 (3082) %	URBAN 1953 (3239) %	RURAL 1957 (1686) %	RURAL 1955 (1705) %	RURAL 1953 (1626) %
Spic & Span	33	32	24	30	27	21
Soilax	5	5	4	2	4	1
Perfex	1	1	1	2	3	3
Oakite	1	1	1	*	*	*
Misc. powder cleaners	1	2	9	1	2	6
	41	41	39	35	36	31
Tide	21	21	25	21	24	24
Cheer	8	8	7	8	8	5
Fab	5	7	5	7	8	8
Surf	1	2	4	1	2	3
Oxydol	2	3	4	3	3	7
All	1	1	1	1	1	*
Breeze	2	2	1	2	2	1
Rinso (Syn.)	2	1	-	1	1	-
Misc. HD syn.	2	1	1	2	*	*
	44	46	48	46	49	48
Dua	2	3	5	3	3	8
Rinso (Soap)	*2	3	6	1	2	4
Super Suds	1	*	1	1	1	3
Silver Dust	1	1	1	3	3	3
American Family Flakes	-	*	1	-	*	*
White King Granules	1	1	1	1	1	1
Misc. HD soap	2	1	2	1	1	2
	9	9	17	10	11	21
Ivory Flakes	1	2	2	*	1	1
Ivory Snow	2	2	2	1	1	1
Lux Flakes	-	1	1	-	1	1
	3	5	5	1	3	3
Dreft	1	1	2	1	2	2
Vel	1	2	2	2	3	3
Trend	1	1	1	1	*	*
	3	4	5	4	5	5
Ivory Soap	2	4	4	1	2	3
Fels	2	2	2	1	1	*
Homemade Soap	-	*	*	-	1	1
Misc. laundry soap	2	2	3	1	1	2
	6	8	9	3	5	6
Joy	1	*	1	1	1	1
Lux Liquid	1	-	-	1	-	-
Misc. liquid	1	-	-	1	-	-
Scouring powders	8	6	6	6	5	2
Water softeners	1	1	-	1	1	-
Ammonia, bleaches, disinfectants	9	6	4	8	4	2
Soft soap	1	2	-	*	-	-
Misc. liquid linoleum cleaners	7	6	-	5	5	-
	29	21	11	23	16	5
	135	134	134	122	125	119

*Less than .5%.

Brands of bar soap kept at kitchen sink

Some women mentioned more than one brand.

NOTE: This information was not obtained in 1953.

	URBAN		RURAL		TOTAL	
Base - total interviews --	1957 (3189) %	1955 (3195) %	1957 (1788) %	1955 (1783) %	1957 (4977) %	1955 (4978 %
Keep at kitchen sink:						
Ivory	40	42	25	27	34	37
Lux	7	6	9	9	8	7
Palmolive	4	5	6	8	5	6
Camay	5	4	9	8	7	6
Dial	3	3	4	4	3	3
Lava	3	2	4	5	3	3
Lifebuoy	2	3	4	4	3	3
Swan	1	3	1	1	1	2
Cashmere Bouquet	1	2	2	2	1	2
Woodbury	1	2	2	2	1	2
Misc.	10	10	11	11	11	10
	77	82	77	81	77	81
Not keep bar soap at kitchen sink	26	25	30	28	28	26
	103	107	107	109	105	107

Brands used - EXTRA DIRTY HANDS

"What products have you yourself used for extra dirty hands in the past 4 weeks either at home or at work?"

Some women mentioned more than one product.

NOTE: This information not obtained in 1953.

	URBAN		RURAL		TOTAL	
Base - total interviews --	1957 (3189) %	1955 (3195) %	1957 (1788) %	1955 (1783) %	1957 (4977) %	1955 (4978) %
Lava	8	6	16	15	11	10
Boraxo	4	3	4	6	4	4
Ivory	4	6	5	4	4	5
Camay	2	2	3	3	2	3
Lux	2	2	4	3	3	3
Palmolive	1	2	2	2	1	2
Dial	2	2	2	2	2	2
Misc. toilet soap	4	6	6	5	5	5
Package soap/detergents	2	3	4	3	3	3
Ajax	2	1	2	2	2	1
Misc. scouring powders	2	2	3	2	2	2
Misc. laundry soap	1	1	1	1	1	1
Solvents (gasoline, kerosene, etc.)	1	1	1	1	1	1
Hand lotions/creams	1	1	1	1	1	1
Borax	1	1	-	1	1	1
Misc.	1	1	1	1	1	1
Not have extra dirty hands	68	65	53	54	62	61
	106	105	108	106	106	106

Bleach usage information

FOR REGULAR LAUNDRY

	URBAN		RURAL		TOTAL	
	1957	1955	1957	1955	1957	1955
Base - total doing family washing --	(2815)	(2802)	(1716)	(1682)	(4531)	(4484)
- % of total interviews --	89%	88%	97%	94%	92%	90%
	%	%	%	%	%	%
Use bleach for regular laundry	75	75	75	73	75	75
Do not use bleach	25	25	25	27	25	25
	100	100	100	100	100	100

FOR FINE FABRICS

	URBAN		RURAL		TOTAL	
	1957	1955	1957	1955	1957	1955
Base - total interviews --	(3189)	(3195)	(1788)	(1783)	(4977)	(4978)
	%	%	%	%	%	%
Use bleach for fine fabrics	14	9	11	5	13	8
Do not use bleach	86	91	89	95	87	92
	100	100	100	100	100	100

FOR DIAPERS

	URBAN		RURAL		TOTAL	
	1957	1955	1957	1955	1957	1955
Base - total having children 2 years old or younger --	(604)	(598)	(345)	(303)	(949)	(901)
- % of total interviews --	19%	19%	19%	17%	19%	18%
	%	%	%	%	%	%
Use bleach for diapers	38	35	38	42	38	37
Do not use bleach	62	65	62	58	62	63
	100	100	100	100	100	100

FOR BABY CLOTHES

	URBAN		RURAL		TOTAL	
	1957	1955	1957	1955	1957	1955
Base - total having children 2 years old or younger --	(604)	(598)	(345)	(303)	(949)	(901)
- % of total interviews --	19%	19%	19%	17%	19%	18%
	%	%	%	%	%	%
Use bleach for baby clothes	30	30	30	37	30	32
Do not use bleach	70	70	70	63	70	68
	100	100	100	100	100	100

Bleach usage information - (Cont'd.)

NOTE: Bleach usage information for the following purposes was not obtained on previous studies.

FOR PORCELAIN BATHTUBS

	1957		
Base - total interviews —	Urban (3189)	Rural (1788)	Total (4977)
	%	%	%
Use bleach for porcelain tubs	33	21	29
Do not use bleach	67	79	71
	100	100	100

FOR PORCELAIN SINKS

Use bleach for porcelain sinks	42	30	38
Do not use bleach	58	70	62
	100	100	100

FOR PORCELAIN DRAINBOARDS

Use bleach for porcelain drainboards	26	15	22
Do not use bleach	74	85	78
	100	100	100

Brands of bleach used during past 4 weeks

Some women mentioned more than one brand.

	REGULAR LAUNDRY		FINE FABRICS		DIAPERS		BABY CLOTHES	
	1957	1955	1957	1955	1957	1955	1957	1955
Base - total using bleach for purpose.--	(3416) %	(3375) %	(650) %	(385) %	(360) %	(334) %	(283) %	(293) %
Liquid bleach:								
Clorox	52	51	28	24	52	46	50	45
Purex	17	15	13	9	17	18	16	17
Roman Cleanser	4	5	2	4	3	2	2	3
Hi-lex	3	3	1	2	4	4	4	3
Linco	2	2	1	1	1	2	2	1
Fleecy White	2	2	1	2	4	3	3	3
Dazzle	1	2	1	2	1	2	1	2
White Monday	1	1	-	1	-	2	-	1
Bright Sail	1	1	-	1	1	-	1	-
White Sail	-	1	1	-	-	-	-	-
Misc. liquid	13	14	12	7	12	16	13	15
	96	97	65	53	95	95	92	90
Dry bleach:								
Dexol	2	3	7	11	3	3	4	4
Purex	-	2	1	2	1	2	1	2
Snowy	1	1	22	26	1	3	2	4
Safety	-	-	1	2	-	-	-	-
Misc. dry bleach	1	1	4	7	1	2	1	2
	4	7	35	48	6	10	8	12
Beads O'Bleach	1	-	2	-	1	-	1	-
Not know, name of bleach	1	2	3	2	2	1	4	3
	102	106	105	103	104	106	105	105

Characteristics of sample

P&G DIVISIONS

Base - total interviews — (4977)

	%
East	20.1
Atlantic	16.6
Central	18.6
Southwest	17.2
West	14.7
Pacific	12.8
	100.0

CITY SIZE

500,000 and over	22.5	
100,000 - 500,000	12.1	
25,000 - 100,000	12.9	
10,000 - 25,000	6.2	
2,500 - 10,000	10.4	
		64.1
Farm	16.8	
Rural non-farm	19.1	
		35.9
		100.0

AGE OF HOUSEWIFE

Under 25	9
25 - 29	10
30 - 39	24
40 - 49	22
50 - 59	16
60 and over	19
	100

TELEVISION OWNERSHIP

Television owner	80
Do not own television	20
	100

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PAGE

Commission's Exhibit No. 323A-C
Memorandum dated February 28, 1957,
Link to Snow

N. P. Link, Jr.

February 28, 1957

Mr. E. A. Snow

CLOROX CHEMICAL COMPANY

CONFIDENTIAL

I is to recommend, assuming that the financial information presently available is reasonably accurate, that Procter & Gamble purchase the Clorox Chemical Company at a price in the vicinity of, or below, $30,000,000 of P&G stock. Our reasons for recommending this purchase are as follows:

1. The total bleach market today is a large and expanding one. Liquid bleaches account for approximately 95% of the total volume, in a market which measures an estimated $80,000,000 plus in terms of annual dealer purchases. Nielsen information, converted on the basis of Stardust cases, shows:

Total Bleach Market, Based on Nielsen
(360 oz. Stardust Cases)*

Calendar Year	Case Volume (000)	% Increase
1953	19,900	
1954	21,100	6.0%
1955	22,900	8.5%
1956	24,400	6.6%

* Liquid bleach cases converted on basis of equal work at instructed usage, eg., 1 Stardust case equals roughly 2 Clorox cases.

We believe that the bleach market will continue to grow because:

a. 75% of U.S. homes now use bleach.

b. A higher percentage of younger women than of older women use bleach.

c. A higher percentage of automatic washer homes than of conventional washer homes use bleach.

Although working from older data, the Company has been estimating a future growth of approximately 2% per year in the total bleach market, new Nielsen information indicates that this growth is likely to be nearer 6%. The resulting case projections, in terms of 360 ounce Stardust cases, are shown below:

Total Bleach Market (in 360 oz. Stardust Cases) (000)

Old 2% Projection from 1954		Calendar Year	New 6% Projection from 1956	
actual	19,900	1953	19,900	actual
"	21,100	1954	21,100	"
estimated	21,500	1955	22,900	"
"	21,900	1956	24,400	"
"	22,300	1957	25,900	estimated
"	22,700	1958	27,400	"
"	23,200	1959	29,000	"
"	23,700	1960	30,700	"
"	24,200	1961	32,500	"

NOTE: No allowance has been made in this table or the one above for possible Nielsen understatement of total market size. Nielsen reports about 88% of total packaged detergent and toilet soap sales, for which we normally make an upward adjustment. There is evidence that a similar factor should be applied for bleach.

147X

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FEDERAL TRADE COMMISSION
DOCKET NO. 8181 COMMISSION EXHIBIT DOCKET NO. 323

2. Clorox is the nation's dominant bleach brand, with a total market share reported by Nielsen as in excess of 42%, or approximately half of the total liquid bleach market.

3. It is unlikely that the growth of dry bleaches will cut into liquid bleach volume for many years to come, or even seriously check further liquid bleach volume growth, our opinion being based on the following:

   a. Although a dry hydrochlorite bleach of the Stardust type offers a measure of extra consumer convenience, plus marginally superior performance (10 for Stardust versus 9 for Clorox on rating chart whitening because of inclusion of bluing), the dry products are about twice as expensive to use and offer no important advantage in container, inasmuch as glass must still be used.

   b. There is a continuing pressure toward liquid products in the related detergent field, coupled with washer manufacturer enthusiasm for liquid products that permit automatic dispensing, which should have a beneficial effect on liquid bleach acceptance.

   c. Our Research & Development Department are on record as seeing nothing that will replace liquid bleach in any great quantity in the foreseeable future.

   d. The Stardust objective of 3½ million cases for its first going year, approximately 1961, is less than half of the total anticipated growth in the bleach market by that date. (See above: 1956 volume of 24,400,000 versus 1961 projection of 32,500,000 — growth of 8,100,000 cases).

4. On the basis of a $30,000,000 purchase price, the payout seems acceptable.

We understand the profit for the second 6 months of 1956 was $2,888,000 before taxes and $1,389,000 after taxes, or at the rate of approximately $2,800,000 per year. Noting that this is a higher profit figure than was reported in previous reviews of the Clorex Chemical Company, we are willing to accept it for our projections because of the overall healthy trend of the Clorex business.

We understand that Clorex has $3,000,000 of cash assets which would make a $30,000,000 purchase have a net cost of $27,000,000 to Procter & Gamble, which is less than 10 times earnings, and therefore within the range set by a normal financial rule of thumb.

Assuming that the payment is made in P&G stock, using a value of $50 per share for convenience in calculation, and reasoning that payout should apply only to the net cost of $27,000,000 it would require $972,000 yearly of the Clorex after tax earnings to cover the dividends on 540,000 shares of P&G stock at the present $1.80 per share annual rate. With the $1,828,000 then available yearly after dividends ($2,800,000 less $972,000) for application to the $27,000,000 purchase price, this would mean approximately 14.8 years to payout.

If the cash available from depreciation yearly is assumed to be $300,000, and this available cash is also applied to the payout, it would be shortened to 12.7 years.

5. This payout may be accelerated by a number of factors: 148X

   a. The foregoing calculations use only the present earning rate, and do not allow for the substantial expansion of Clorex volume which market projections indicate are reasonable

ntly Bound

and which past history of the Clorox Chemical Company shows should be anticipated. For example, if Clorox is successful in maintaining its present share of the total bleach market, with expansion of 6% a year, its volume will be one-third greater 5 years from now.

5,000,000 cs x .116 profit per cs = $725,000

We are advised that Clorox spent $2,660,000 in the last half of 1956 for advertising, or at the rate of $5,320,000 a year. We believe that P&G advertising philosophies and economies applied to an advertising expenditure of this size can be expected to further advance the Clorox business.

It is conceivable that the profitability of the Clorox business may be improved. Recognizing that Procter & Gamble overhead charges, if applied to the Clorox P&L statement, might appear to reduce the profitability or at least to offset any economies under P&G operation, there remain such possibilities as a 5¢ to 10¢ increase in the price per case (using Clorox 12 quart case as a base), which could conceivably be accomplished without an increase in the retail price, thereby expanding profit.

We may be able to derive additional value from the Clorox name for other new and related products, which may not perhaps be measurable in exact dollars, but should nevertheless be considered as value returned on the investment.

M. P. Link, Jr.

FEDERAL TRADE COMMISSION
DOCKET NO. 8811 EXHIBIT NO. 323-C

Commission's Exhibit No. 324A-D
Memorandum dated October 26, 1956,
Snow to Warrington

T. M. Warrington

October 26, 1955

Mr. E. A. Snow

Clorox

CONFIDENTIAL

We feel the Company should consider getting into the liquid bleach market by purchasing the Clorox Chemical Company, assuming such a purchase could be made at a reasonable price.

BLEACH MARKET BACKGROUND

The total bleach market today is a large one and is continuing to show growth. The liquid bleaches account for almost 90% of the total market. Nielsen figures show:

Bleach Mkt. Dealer Purchase $ (000)

	Liquid	Dry	Total	% Liquid of Total
Fiscal 1952-53	$56,714	$7,627	$64,341	88.2%
1953-54	59,973	9,808	69,781	86.0%
1954-55	66,029	8,309	74,058	88.8%

We feel that the liquid bleaches will continue to dominate the market volume-wise since they are by far the most economical for the consumer to use. Further, RADD does not know of any new developments that would tend to make liquid bleaches obsolete.

We also feel the bleach market will continue to grow because (see Exhibit I):

a) 75% of the homes now use a bleach.
b) Younger women bleach more than do older women.
c) Automatic washing machine homes use more bleach than do conventional washing machine homes.

We estimate the total liquid bleach market today to be about 44,000,000 cases (3-gallon case). This splits up about as follows:

	Based on Nielsen Consumer Purchases - Unit 32 oz. Share of Market	Est. Cases/Year
Clorox (National)	44%	19,400
Purex (Sectional)	16%	7,000
All Others	40%	17,600
	100%	44,000

The P&A figures for liquid bleaches are quite low. We do not have an accurate figure for Clorox, but estimate the total P&A to be about 25¢-35¢ per case, of which 15¢-20¢ per case could be profit before taxes.

We would not recommend that the Company consider trying to enter this market by introducing a new brand or by trying to expand a sectional brand. This is because we feel it would require a very heavy investment to achieve a major volume in the field, and with the low "available" the payout period would be very unattractive. For example:

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FEDERAL TRADE COMMISSION
DOCKET NO. 6991 EXHIBIT NO. 324-A
IN THE MATTER OF The Procter & Gamble Co.
DATE 2-4-59 WITNESS Morgan
ALDERSON REPORTING CO., Official Reporters
By

ghtly Bound

If we assumed we would spend $20,000,000 in the first three years of introducing a new brand, and that we achieved an annual volume of 14,000,000 cases (3% of the market), it would require 5 years to pay out assuming a total P&A of 35¢. It is quite dubious that we could do this well by introducing a new brand. Furthermore, this calculation assumes that nothing is spent for plant investment, etc.

Taking over the Clorox business, however, - · · a way of achieving a dominant position in the liquid bleach market quickly which would . . .t reasonably well.

CLOROX CHEMICAL COMPANY

The attached exhibit gives a history of net sales and earnings for this company. In fiscal 1954-55 net sales were $33,874,000, and the net profit after taxes amounted to $2,041,000. We estimate that they spent about $3,000,000 on advertising during this fiscal year.

We understand that Clorox sells through a broker/jobber set up, and that while they are #1 nationally, there are many important markets where their share of the bleach market is quite low. We feel that with our sales, distribution and manufacturing set up, we could effect a number of savings that could possibly increase the net profit of their business considerably -- say to a net profit of $3,000,000 on net sales of $33,000,000.

The latest stock quotation (San Francisco Exchange, week ending October 21) showed Clorox stock to be selling at about $60 a share. The cost for acquiring all outstanding shares (361,722) would thus be about $22,000,000. Such a purchase would, however, include the company's cash balance and securities, which was $2,100,000 on June 30, 1955. Hence, the net cost to buy the company might be around $20,000,000.

For this estimated expenditure of $20,000,000, we would get:

1. A going volume of an estimated 20,000,000 cases of liquid bleach.
2. A theoretical gross profit of $4,000,000 per year (20¢ per case).
3. A theoretical advertising available of $3,000,000 (15¢ a case).
4. Net assets (other than cash and equivalent) amounting to about $6,800,000.
5. The rights to the Clorox name, which could conceivably be used in marketing a dry bleach.

If we could acquire the Clorox Company for a net cost of $20,000,000, this theoretically could be vered by issuing 200,000 shares of P&G stock. Dividends (figured at $3.50) required to these additional shares would amount to $700,000 a year, but for this we might expect to add an additional $3,000,000 to the over-all Company net profit.

• • • • • • • • •

We, of course, do not know if it is possible to buy the Clorex Company. If, however, you agree with the thinking outlined above, we recommend that we take further steps to ascertain whether or not there is a possibility of beginning negotiations with the Clorox people.

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T. M. Harrington

GLIDDEN CHEMICAL COMPANY

Year Ending June 30	Net Sales (000)	Net Income (000)	Net Earnings As a % of Net Sales	Earnings Per Share	Dividend Per Share
1955	$ 33,874	$ 2,041	6.03%	$ 5.64*	$ 3.00**
1954	30,285	1,344	4.44	4.09	3.00
1953	27,714	1,349	4.87	4.10	3.00
1952	23,625	1,255	5.31	3.82	2.50

* Based on shares outstanding after 10% stock dividend May, 1955. Figured to be comparable to previous years would be $6.21.

** Plus 10% stock dividend.

BALANCE SHEET 6/30/55
(000)

ASSETS		LIABILITIES	
Cash	$ 1,399.0	Accounts Payable	$ 1,190.0
U. S. Securities	710.0	Accrued Taxes (Est)	143.0
Accounts Receivable	1,747.0		$ 1,333.0
Inventories	1,239.0	CAPITAL:	
Buildings and Land	4,802.0	Capital Shares - $3.33-1/3 (361,722)	$ 2,773.0
Prepaid Expenses	291.0	Earned Surplus	6,082.0
Trade-Marks ($1.00)	-		$ 8,855.0
TOTAL	$10,188.0		$10,188.0

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ERAL TRADE COMMISSION
10/24/55
324-C

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CLOROX CHEMICAL CO.

1. Correlation between Nielsen Figures showing dealer dollar purchases for Clorox and Co. Net Sales Figures:

	Nielsen $'s	Co. $'s	% Nielsen to Co. $'s
Fiscal 1952-53	$25.988	$27.714	93.77%
Fiscal 1953-54	28.423	30.285	93.85%
Fiscal 1954-55	31.753	33.875	93.74%

2.

	1954-55	1953-54	1952-53
Est. # Cases *	20,200	18,300	17,000
Net Sales ÷ Cases	$ 1.63	$ 1.65	$ 1.63
Gross Profit	$4,240	2.737	2.998
Gross Profit ÷ Cases	$ 0.21	$ 0.15	0.176
Net Profit	2.041	1.349	1.348
Net Profit ÷ Cases	$0.101	$0.074	$0.079
Gross Profit + 3,000 adv.	7,240	5.737	5.998
Above ÷ cases	$0.358	$0.313	$0.352

* Nielsen dealer purchases inflated 6.7% to conform to correlation shown above.

TMW:ms

10/26/55

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TABLE 4

HOUSEHOLD BLEACHES - #1

CONSUMER SALES - DOLLAR BASIS
AT COST PRICE TO CONSUMER

JUNE-JULY 1957

[redacted]

	TOTAL HOUSEHOLD BLEACHES	PUREX LIQUID BLEACH	CLOROX LIQUID BLEACH	FLEECY WHITE	HILEX	LINCO	ROMAN CLEANSER	SANI-FLUSH	TEXIZE	ALL-OTHER LIQUID HOUSEHOLD BLEACH	JACK DRY BLEACH	OXIDOL	HILEX	SNOWY BLEACH	ALL-OTHER DRY HOUSEHOLD BLEACHES
TOTAL	[illegible]	[illegible]	[illegible]	40	33	31	[illegible]	1.1	0.7	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
UNITED STATES	19,912,477	2,770,892	8,682,252	700,989	500,299	359,207	1,084,630	140,389	89,866	3,359,786	640,228	504,524	71,160	867,913	180,206
	100.0%	14.0%	43.3%	3.5%	2.5%	1.8%	5.1%	0.8%	0.4%	16.8%	3.2%	2.5%	0.4%	4.3%	0.9%
BY TERRITORIES															
NEW ENGLAND	1,220,277	-	638,463	-	-	-	-	-	-	482,736	32,041	-	-	70,055	10,201
MIDDLE NEW YORK	1,777,742	-	1,023,808	-	-	-	-	-	-	560,699	33,180	-	-	110,200	40,755
MIDDLE ATLANTIC	2,100,079	-	1,202,781	-	-	-	-	-	-	540,677	78,323	7,028	-	140,155	41,697
EAST CENTRAL	3,107,706	162,010	1,270,460	100,210	30,094	21,086	882,636	-	-	604,407	100,746	140,250	4,091	184,884	8,830
WEST CENTRAL	700,007	204	140,519	100,100	204	291,125	-	-	-	11,400	34,980	13,510	-	55,000	42,102
WEST CENTRAL	2,100,650	440,204	700,290	103,625	200,701	40,210	-	-	-	132,752	67,313	222,120	60,509	90,300	12,200
SOUTHEAST	2,970,114	400,670	1,100,210	100,410	-	-	152,014	-	89,866	400,104	37,100	-	-	40,000	8,027
SOUTHWEST	1,004,000	677,130	600,677	87,004	-	-	-	-	-	137,700	40,041	20,000	-	20,770	000
PACIFIC	2,000,370	1,002,013	900,700	-	-	-	-	140,389	-	301,300	127,273	-	-	100,402	21,000
BY COUNTY SIZES															
CLASS A - OVER U. V. AND OVER	2,300,640	300	1,100,320	100,720	504	291,123	-	-	-	100,100	67,713	13,500	-	107,104	00,000
REMAINING A	4,100,044	700,000	2,004,177	00,772	100,010	7,410	417,999	00,277	-	670,207	102,300	00,000	20,701	242,404	40,000
CLASS B	5,401,107	700,401	2,007,000	103,015	30,000	27,107	200,020	21,007	27,733	007,713	202,120	110,407	0,211	200,700	27,000
CLASS C	4,010,010	010,042	1,704,010	210,000	104,100	20,100	102,040	10,102	22,400	000,100	120,004	110,212	17,202	140,200	20,007
CLASS D	2,000,402	007,000	1,100,200	120,220	220,200	4,000	72,071	0,700	10,020	272,002	02,177	170,007	10,070	00,021	0,000
BY SYNIC TYPES															
CHAIN	0,070,020	020,200	3,007,000	200,000	170,004	147,010	401,002	00,010	01,000	1,702,000	200,000	107,000	20,200	000,200	100,200
INDEPENDENT	11,002,200	1,000,000	4,070,207	000,000	000,200	211,202	000,700	00,070	00,002	1,000,700	200,000	200,000	00,007	000,200	00,100
BY SYNIC SIZES -INDEPENDENT STORES ONLY-															
SUPER LARGE -OVER $000 M+	3,117,010	007,700	1,200,007	00,100	102,000	70,000	201,001	20,000	17,170	200,707	112,200	70,707	17,002	102,207	10,000
LARGE -$000 M TO $000 M-	3,102,100	000,000	1,000,207	121,702	100,020	02,200	720,000	20,100	20,000	200,000	00,020	122,000	17,000	107,000	17,700
MEDIUM -$00 M TO $000 M-	2,170,000	200,100	000,002	02,000	00,211	00,077	102,200	0,702	0,000	207,000	02,710	00,001	0,200	00,700	12,000
SMALL -UNDER $00 M-	2,004,121	000,710	1,000,001	110,000	00,000	00,000	112,207	7,000	0,002	001,000	14,772	00,700	2,000	00,200	12,000

TABLE 9

HOUSEHOLD BLEACHES - 1971

CONSUMER SALES - BY ITEM
LIQUID - 32 OZ. EQUIVALENT
POWDERS - 8 OZ. EQUIVALENT

JUNE-JULY 1971

	TOTAL HOUSEHOLD BLEACHES	PURE LIQUID BLEACH	CLOROX LIQUID BLEACH	FLEECY WHITE	HILEX	LINCO	ROMAN CLEANSER	SANI-FLUSH	TEXIZE	ALL-OTHER LIQUID HOUSEHOLD BLEACH	32 OZ. EQUIV. PURE DRY BLEACH	SNOW	SOLEX	SWEET BLEACH	ALL-OTHER DRY HOUSEHOLD BLEACHES
TOTAL UNITED STATES	116,959,619	15,388,400	47,998,700	4,321,800	3,577,600	2,408,150	9,100,500	980,600	588,700	23,617,775	1,880,700	3,948,240	619,400	4,398,700	1,204,654
	100.0%	13.1% R/T	41.1% R/T	3.7% R/T	3.0% R/T	2.1% R/T	7.8% R/T	0.8% R/T	0.5% R/T	20.2% R/T	1.6% R/T	3.4% R/T	0.5% R/T	3.8% R/T	1.0% R/T
BY TERRITORIES															
NEW ENGLAND	8,895,133	-	3,993,200	-	-	-	-	-	-	3,527,000	87,900	-	-	488,700	67,300
	100.0%	-	44.9% R/T	-	-	-	-	-	-	39.6% R/T	1.0% R/T	-	-	5.5% R/T	0.8% R/T
METRO NEW YORK	10,900,066	-	5,902,950	-	-	-	-	-	-	4,000,200	101,800	-	-	488,700	306,416
	100.0	-	54.1 R/T	-	-	-	-	-	-	36.7% R/T	0.9	-	-	4.5	2.8
MIDDLE ATLANTIC	12,945,229	-	7,784,400	-	-	-	-	-	-	3,838,300	207,946	62,327	-	784,100	268,456
	100.0	-	60.1 R/T	-	-	-	-	-	-	29.6 R/T	1.6	0.5%	-	5.0	2.0
EAST CENTRAL	21,987,595	877,900	7,644,800	1,087,300	172,600	133,000	3,181,200	-	-	4,298,300	497,100	1,003,477	39,207	988,000	66,711
	100.0	4.0% R/T	34.8 R/T	4.9% R/T	0.8% R/T	0.6% R/T	14.5% R/T	-	-	19.6 R/T	2.2	4.6	0.1% R/T	4.5	0.3
METRO CHICAGO	4,649,398	2,400	980,200	674,450	3,600	1,981,800	-	-	-	100,300	100,400	105,270	-	284,370	210,910
	100.0	0.1 R/T	20.8 R/T	15.2 R/T	0.1% R/T	44.0 R/T	-	-	-	2.3 R/T	2.4	2.3	-	6.1	4.1
WEST CENTRAL	10,199,604	2,384,150	4,219,150	1,281,200	3,396,400	310,350	-	-	-	1,232,300	207,270	2,501,200	394,186	484,870	78,000
	100.0	15.6 R/T	27.7 R/T	7.5 R/T	20.2 R/T	1.9 R/T	-	-	-	7.3 R/T	1.3	19.2	2.3	2.8	0.5
SOUTHEAST	10,408,574	2,348,400	7,988,250	923,950	-	-	1,012,300	-	588,700	3,219,450	109,800	-	-	288,700	78,000
	100.0	16.3 R/T	48.6 R/T	5.7	-	-	6.1	-	3.5% R/T	19.5 R/T	0.7	-	-	1.8	0.5
SOUTHWEST	9,710,276	3,980,600	4,640,250	398,300	-	-	-	-	-	680,300	139,990	167,841	-	148,370	8,000
	100.0	30.7 R/T	48.7 R/T	4.1	-	-	-	-	-	8.5 R/T	1.3	1.7	-	1.5	0.1
PACIFIC	15,644,684	5,970,700	5,301,800	-	-	-	-	980,600	-	2,119,700	393,660	-	-	888,100	102,700
	100.0	38.2 R/T	38.2 R/T	-	-	-	-	6.3% R/T	-	13.6 R/T	2.5	-	-	5.7	1.0
BY COUNTY SIZES															
CLASS A - METRO N. Y. AND CHGO.	15,388,434	2,400	8,831,150	674,450	3,600	1,981,800	-	-	-	4,100,500	207,200	105,270	-	992,700	500,170
	100.0%	-	44.5%	4.4%		12.8%	-	-	-	26.7%	1.4%	0.7%	-	6.5%	3.2%
REMAINING A	29,202,052	4,229,300	11,633,000	600,300	960,000	127,700	2,430,200	587,600	-	5,998,000	220,400	672,200	102,400	1,202,000	348,252
	100.0	14.5%	39.1	2.1	3.3%	0.2	8.3%	2.0%	-	20.5	1.8	2.3	0.3%	4.2	1.2
CLASS B	32,254,007	4,191,900	14,202,150	1,009,600	220,000	100,200	2,282,400	217,200	230,600	6,880,700	980,190	940,897	29,190	1,101,200	500,000
	100.0	13.0	44.0	3.2	0.7	0.3	7.1	0.6	0.8%	21.3	1.9	2.0	0.1	3.4	1.5
CLASS C	22,099,641	3,277,500	9,414,450	1,302,500	997,600	179,600	1,130,500	127,600	202,300	4,170,705	380,310	888,697	180,000	772,700	447,000
	100.0	14.2	42.7	5.7	4.3	0.8	4.0	0.5	0.9	18.1	1.6	3.8	0.6	3.4	2.0
CLASS D	17,044,270	3,689,200	8,117,300	736,900	1,310,200	30,800	429,000	68,600	130,800	2,490,980	180,417	1,330,370	108,910	234,370	84,000
	100.0	21.5	35.9	4.3	0.1	0.3	2.5	0.4	0.8	14.6	1.1	7.9	0.6	1.7	0.5
BY STORE TYPES															
CHAINS	52,680,120	4,762,100	22,027,300	1,989,200	1,107,900	1,008,600	2,012,600	488,000	382,900	12,272,050	1,180,277	1,527,700	191,110	2,200,130	500,000
	100.0%	9.0%	42.0%	3.8%	2.1%	1.9%	3.8%	0.9%	0.7%	23.3%	2.2%	2.9%	0.4%	4.2%	1.0%
INDEPENDENTS	63,279,299	10,598,800	25,110,750	2,300,400	2,462,500	1,390,550	5,281,100	525,600	500,200	11,345,270	736,340	2,407,577	388,390	2,000,600	617,000
	100.0	16.7	39.7	3.6	3.9	2.2	8.4	0.8	0.8	17.9	1.2	3.8	0.6	3.2	0.9
BY STORE SIZES -INDEPENDENT STORES ONLY-															
SUPER LARGE -OVER $500 M	10,647,401	2,687,900	7,193,950	570,100	647,900	574,450	1,266,500	230,700	111,600	2,521,650	330,410	988,470	102,710	720,270	110,000
	100.0%	19.0%	38.0%	3.1%	3.4%	3.1%	6.8%	1.2%	0.6%	12.2%	1.8%	3.2%	0.5%	4.0%	0.6%
LARGE -$250 M TO $500 M	17,888,403	2,868,650	7,698,950	727,000	929,130	404,900	788,800	187,800	132,700	2,220,600	280,116	988,588	101,600	722,600	117,000
	100.0	15.9	41.7	4.1	5.2	2.2	4.3	1.1	0.7	12.3	1.5	5.4	0.5	4.0	0.7
MEDIUM -$50 M TO $250 M	12,454,293	1,602,700	5,143,300	489,300	410,400	212,100	727,300	99,300	30,200	2,439,300	92,000	482,588	44,607	320,270	80,000
	100.0	12.9	41.3	3.8	4.1	1.7	5.9	0.5	0.2	21.2	0.7	3.7	0.3	2.6	0.7
SMALL -UNDER $50 M	14,291,122	2,457,000	5,314,500	997,000	390,300	198,100	618,500	52,600	31,700	3,844,700	40,220	442,191	19,207	109,200	60,000
	100.0	17.2	37.2	6.2	2.7	1.5	4.3	0.3	0.2	27.0	0.2	3.1	0.2	1.3	0.8

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Now...

MONEY-SAVING CLOROX Special!

HURRY! These money-saving Clorox offers are being made for a limited time only. Better shop now. Buy Clorox today!



You get a CLEANER WASH with CLOROX...

whiter...brighter...sanitary, too!

For making white cottons extra white ...color-fast cottons extra bright...more housewives depend on Clorox than any other product of its kind. That's because Clorox is America's most efficient bleach, deodorizer, stain remover, and disinfectant. You get a cleaner wash with Clorox every time!

THIS OFFER AVAILABLE ONLY IN ERIE COUNTY

156X

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PAGE

Commission's Exhibit No. 348A-D
"Moonbeams" for November 1956

MOONBEAMS

for the Procter & Gamble Sales Organization

November 1956



FEDERAL TRADE COMMISSION
DOCKET NO. 6321 RESPONDENT'S EXHIBIT NO. 348 D
IN THE MATTER OF Procter & Gamble Company
DATE 2-6-57 WITNESS
ACE REPORTING CO., INC.
By

157X 3813

MILESTONES

CX 34 Y(b)

OF P & G PROGRESS

FEDERAL TRADE COMMISSION
DOCKET NO. 8331 EXHIBIT NO. 348 B

Chairman of the Board Richard R. Deupree, in his report to the more than 50,000 P & G shareholders at the annual meeting last month, made this analysis of the Company's business over the past twelve months. These are excerpts from his remarks:

1. DIVERSIFICATION

As we have told you before, Procter & Gamble is actually engaged in several different industries. This diversification of interest has always been important and profitable to us. It is not something started only recently.

Of course, soaps, shortenings and oils have always been and remain our major business. But since around 1900 we have been crushers of cottonseed and for twenty to thirty years have been engaged in handling soybeans and copra, using the oil and lint in our own plants, but doing a very important business in the balance of the products which are sold to various customers. Since 1920, we have been manufacturers of high grade cellulose pulp from cotton linters, our production being sold to others for further processing. Our pulp production was recently more than doubled when we began to make cellulose products from wood in our Florida mill, and since around 1933, we have been in the toilet goods business. All of these are important steps in the diversification of our business.

With this background of knowledge of the basic raw materials used, we felt sure that we had learned some valuable lessons in diversification. You might say we had "our foot in the door" in entering the peanut butter and other food products field and also in recently manifesting our interest in the paper products business: drawing heavily, in all of these, on our past experience and information in related fields as well as on our tested research and marketing facilities.

2. CONSUMER PRODUCTS HAVE MUCH IN COMMON

A business such as ours really depends for its success on being alive and alert to the needs and desires of millions of American households. We must be ready with new or improved products to please the housewife. It is our policy to find out what her needs and desires will be, to anticipate them through our consumer research. Then we go to work in our laboratories to invent and develop those better products. These days when consumers are impatient for better products, and all companies are striving to meet consumers' demands, it is fatal for any business to fail to keep up, or if it can, to keep ahead. Product changes and improvements are costly but they are essential if you want to maintain a strong, growing business.

3. ANSWERING SHAREHOLDERS' QUESTIONS

Since our recent purchase of the Duncan Hines cake mix business and our interest in the paper products field, it would be natural for any shareholder to ask: *why do we go into businesses like cake and other flour and shortening mixes, peanut butter and paper tissues?*

Our answer would be simply that we feel our experience and marketing skill qualify us carefully to diversify our operations and that by choosing subsidiaries well and applying Procter & Gamble's merchandising methods to related consumer products businesses, we add to the stability and profits of the business.

4. TWO EXAMPLES

It is common knowledge that many women are interested in saving time in the kitchen by making a ready-mixed packaged cake or biscuits. Naturally that would mean she would be using less of our shortening in her home. We might be able to sell bulk fat to the makers of the packaged cake mix, but traditionally, we prefer to sell a consumer product and direct its marketing. So we went into the cake mix field ourselves, as it seemed a logical addition to our food product business.

As for paper products, we have the basic knowledge acquired by the manufacture of paper pulp and we know Americans are now using more paper of all kinds than ever before in history, particularly the kind of paper in which we are interested. In 1900, the average American used 58 pounds of paper a year where today

ghtly Bound

(CX 348 E)

FEDERAL TRADE COMMISSION

DOCKET NO. 8781 [redacted] EXHIBIT NO. 348 E

the figure is in excess of 418 pounds apiece and it is still growing as more and more uses for paper are found. Some of these new uses around the home have displaced products which always required regular washing.

As you can see, every venture we have gone into really fits into, or alongside of, a successful Procter & Gamble operation. In each case, we are familiar with the basic raw materials and have much experience to contribute to the marketing and manufacturing phases.

5. OUR TRAINED ORGANIZATION

Naturally the Company can only move ahead and take advantage of these new opportunities when we have the organization trained and ready to handle the new assignments. The organization has been carefully put together to handle an ever-growing business. With us, this means building up a completely integrated organization to handle each of the various types of industry in which we are engaged. This includes a complete business unit, comprising manufacturing, selling, advertising, research, accounting and all other functions for a complete job. Our Toilet Goods organization is such a unit, which has been set up so that it parallels our soap and synthetic detergent organization in every respect, and yet functions independently of it and of other parallel organizations in the Company. This is the pattern we follow wherever possible throughout the business with the various decentralized operations responsible to top management. The plan has proved successful time after time and given the Company strength and its shareholders security.

7. OVERSEAS OPERATIONS

I can report that we are doing very well in our overseas operations. Soon we will be opening a plant in Belgium, where our products have sold well for several years. This type of procedure takes place each time: after a market has been established through our export department, we go into a country and set up a complete operation without too much of a risk.

We are fortunate that the habits of most people in these various countries are similar to ours, not in every detail, but basically, and while it is necessary to use changed formulas, make different products, and so on, the knowledge which we have gained in American marketing has been successfully employed again and again overseas. This procedure has been going on for 25 years and our overseas subsidiaries are adding earnings and assets to the Company thereby strengthening the fabric as a whole.

8. FINANCING GROWTH

It is hard for anyone to appreciate fully the revolutionary economic changes which have come to our country and the world during the past 10 years. The improved standard of living in the United States has brought increased consumption of our products and made the amount we have spent in modernizing our plants and equipment the largest in Procter & Gamble history. Invention and discovery set a fast, but costly pace.

An example is the miraculous growth of synthetic detergents in 10 years, which led to the costly scrapping of a large amount of our soap-making equipment and its replacement with expensive new equipment. Yet no one could deny that this change-over to synthetic detergent production, whatever it cost, was essential if we were to lead in this new field. The expansion into the production of cellulose pulp from wood in Florida was another expensive step, requiring large expenditures of capital, and our wood-pulp business has been doing very well.

Traditionally we have financed our company growth out of depreciation and earnings left after dividends. However the tremendous upsurge of the past 10 years has made it impossible to continue to do this. We borrowed $30 million in 1952 when we erected our first wood pulp plant in Florida and acquired substantial acreage of woodlands as an important source of the raw materials needed. Just last month, the Company sold $70 million in debentures, and a large part of this money will be used to enlarge our Florida plant and in other phases of the business.

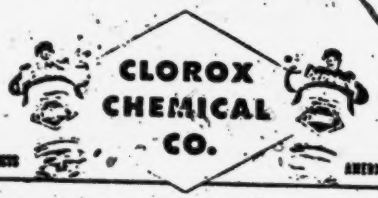
You must realize that the use of that $100 million of working capital should create earnings sufficient to pay the current interest and, through the years, retire the original obligation and still bring us extra net earnings. Every shareholder can be assured when Procter & Gamble takes on an obligation of this kind and size it is because, in the eyes of the management, it is essential to have the capital to realize to the fullest the potentialities of strong vigorous growth and continue the Company in its leading position.

9. PLANS FOR EMPLOYEES

We are pleased to tell you that the Company's plans for employees have been strengthened and improved over the years. These employee plans have been an integral part of our operation

Continued on page

159X



CLOROX BLEACHES · REMOVES STAINS · DEODORIZES · DISINFECTS

AMERICA'S FAVORITE BLEACH AND HOUSEHOLD DISINFECTANT

GENERAL OFFICES: 1221-62nd ST., OAKLAND 8, CALIF. · FACTORIES: ATLANTA · BOSTON · CANTON · CHARLOTTE · CHICAGO · CLEVELAND · HOUSTON · JERSEY CITY · KANSAS CITY MO. · LOS ANGELES · OAKLAND · SEATTLE · TAMPA

FEDERAL TRADE COMMISSION
DOCKET NO. [illegible] 372 D
IN THE MATTER OF [illegible]
DATE 2-6-57 WITNESS
ACE REPORTING CO., Official Reporter
By

OAKLAND 1, CALIFORNIA

July 6, 1956

Commission's Exhibit No. 372A-D
Clorox Chemical letter to distributors dated July 6, 1956

TO OUR DISTRIBUTORS:

CLOROX advertisements will appear in 900-line or 604-line size in hundreds of leading daily newspapers from coast to coast on the following dates:

Ad No. 5609 - July 12th/13th

Ad No. 5610 - July 26th/27th

Supplementing these newspaper ads for CLOROX, a dominant two-color advertisement is scheduled for the July/August issues of fourteen major magazines. This ad and the magazines in which it appears are shown in our last CLOROX Broadside to the trade.

These ads are headlined with the strong selling message, "You get a CLEANER WASH with CLOROX...whiter...brighter... sanitary, too!" They make a forceful bid for extra CLOROX use and sales. The ads stress the benefits of CLOROX-laundering white and color-fast cotton and linen and white 100% nylon, rayon, Dacron, Orlon and Dynel, too!

IT IS IMPORTANT for your trade contacts to encourage the retailers they supply to tie in with this CLOROX consumer advertising which gives an extra boost to Summer's stepped-up demand for CLOROX.

Because of recent revisions in our newspaper schedules, it is important that you immediately compare the Redline Schedules dated July 3rd, sent you by our Advertising Agency, with Redline Schedules dated June 4th. There may be some changes in size of ads, or eliminations of newspapers which have been put into effect in your territory.

160X

ghtly Bound

FEDERAL TRADE COMMISSION
DOCKET NO. 8081 EXHIBIT NO. 372 B
20A
181

TO OUR DISTRIBUTORS:

July 6, 1956

Reprints of the July 12th/13th CLOROX newspaper advertisement have been sent to you under separate cover, and we are asking that you mail them to your trade...along with your CLOROX bulletin prepared from the suggested copy which accompanies this letter. Please send us a copy of your bulletin for our files.

You will note in the suggested bulletin, space has been allowed for you to insert the names of newspapers to be used in your territory. The names of newspapers are shown in Redline Schedules, dated July 3rd, sent you by our Advertising Agency.

Very truly yours,

CLOROX CHEMICAL CO.

Neil Shaver

Neil Shaver
Advertising Manager

NS:dcl
Encls.

161X

FEDERAL TRADE COMMISSION
DOCKET NO. 8591 EXHIBIT NO. 372 C

TWO POWERFUL NEW CLOROX ADS

SCHEDULED TO HELP

BOOST YOUR SUMMER SALES!

Two powerful CLOROX newspaper advertisements are scheduled for July!

THE FIRST AD (enclosed) will appear on July 12th/13th... the second ad on July 26th/27th. Both ads are scheduled in hundreds of leading daily newspapers from coast to coast, including the following in our territory:

These newspaper ads will be supplemented by a dominant two-color CLOROX advertisement in the July/August issues of fourteen major magazines.

MAKING A STRONG BID for extra CLOROX use and sales, these advertisements are headlined, "You get a CLEANER WASH with CLOROX...whiter...brighter...sanitary, too!" They stress the benefits of CLOROX-laundering white and color-fast cotton and linen and white 100% nylon, rayon, Dacron, Orlon and Dynel, too!

POINT OUT to the retail outlets you supply the advantages of cashing in on this forceful national advertising that's geared to give an extra boost to Summer's stepped-up demand for CLOROX.

URGE RETAILERS to stock an ample supply of CLOROX in all sizes and to feature CLOROX in their own store advertising and in mass and related-item displays.

REMIND THEM that CLOROX -- America's No. 1 Bleach and Household Disinfectant -- is first in sales and first in selling support!

Very truly yours,

162X

ghtly Bound

FEDERAL TRADE COMMISSION
DOCKET NO. 8901 EXHIBIT NO. 372 D

You get a CLEANER WASH with CLOROX

...whiter...brighter...sanitary, too!



No other home laundering product equals CLOROX in germ-killing efficiency!

More and more women are laundering *more and more fabrics* with Clorox...and here's why: Clorox *disinfects* as it bleaches, brightens, removes stains and odors... makes your wash *hygienically cleaner, safer* for family health. And Clorox is free from caustic, *so gentle* you can *Clorox with confidence* all your finest white and color-fast cotton and linen...and white 100% nylon, rayon, *Dacron, Orlon* and *Dynel!*



A Clorox-clean house is just as important as a Clorox-clean wash! Used in routine cleaning, Clorox not only removes stains and odors...it *disinfects*, makes homes *safer* for family health!



Every time you use CLOROX you protect family health!

Adv. No. 5609—Newspapers, 5 col. x 12⅞ in.

163X

Adv. No. 5609B—Newspapers, 4 col. x 10¼ in.

16

(X 374(A)

CLOROX CHEMICAL CO.

CLOROX BLEACHES · REMOVES STAINS · DEODORIZES · DISINFECTS — AMERICA'S FAVORITE BLEACH AND HOUSEHOLD DISINFECTANT

GENERAL OFFICES: 1221-4200 AVE., OAKLAND 1, CALIF. · FACTORIES: ATLANTA · BOSTON · CAMDEN · CHARLOTTE · CHICAGO · CLEVELAND · HOUSTON · JERSEY CITY · KANSAS CITY (KS.) · LOS ANGELES · OAKLAND · SEATTLE · TAMPA

FEDERAL TRADE COMMISSION
DOCKET NO. 6741
IN THE MATTER OF THE CLOROX CO.
DATE 2-6-58 VOL. 5
ACE REPORTING CO., Official Reporter
By Lee

OAKLAND 1, CALIFORNIA

July 20, 1956

Commission's Exhibit No. 374A-C
Clorox Chemical letter to distributors dated
July 20, 1956

Gentlemen:

Here's Big CLOROX Selling News!

TELEVISION HAS BEEN ADDED to the CLOROX national advertising campaign! Beginning this month, an impressive series of CLOROX television spot announcements will substantially increase the already-great selling power of CLOROX advertising which year-in, year-out, gives you the strongest support in its field. This means many more CLOROX selling messages, and much greater impact of CLOROX advertising, than ever before.

SCHEDULED IN YOUR TERRITORY and in many other metropolitan markets, the new CLOROX television spots supplement and tie in with regular CLOROX advertising which appears consistently in more than 600 daily newspapers from coast to coast, in 14 major magazines and on colorful outdoor posters in many principal marketing areas.

TAKE ADVANTAGE OF THE EXTRA IMPACT OF CLOROX TV ADVERTISING! Check with station to be used as to area served, and alert your trade contacts in such area with a special "News Flash!" (copy enclosed). Please send us a copy of trade bulletin for our files, together with list of the trade contacts to whom sent.

You and your salesmen covering such area should be throughly familiar with this TV campaign and station coverage, and should make an all-out effort to secure CLOROX mass-display and store-advertising tie-ins in retail outlets.

EVERY STEP YOU TAKE in the energetic merchandising of CLOROX advertising is an important step toward increased CLOROX sales...and greater profits for you!

164X

ghtly Bound

FEDERAL TRADE COMMISSION
DOCKET NO. 6931 EXHIBIT NO. 374 B

164
(B)

Our Advertising Agency is writing you regarding certain merchandising work to be done by the respective television station. They are also requesting the station manager to show the CLOROX series of TV spots to you and your salespeople. We ask that you arrange a prompt appointment to see the spots and discuss the merchandising work which the station will do. We are confident you will find the station manager most co-operative.

The attached schedule, which will be subject to periodic revisions as new availabilities become obtainable, shows the beginning CLOROX television coverage in your territory.

Very truly yours,

CLOROX CHEMICAL CO.

Neil Shaver
Advertising Manager

NS:del
Encls.

(SUGGESTION FOR BULLETIN TO BE MAILED BY DISTRIBUTOR TO TRADE CONTACTS IN AREA SERVED BY STATIONS BEING USED.)

NEWS FLASH!

CLOROX ADDS TELEVISION

TO ITS POWERFUL ADVERTISING TEAM!

Here's Big CLOROX Selling News!

CLOROX NOW ADDS TELEVISION to its national advertising campaign! Beginning this month, an impressive series of CLOROX television spot announcements will substantially increase the already-great selling power of CLOROX advertising which year-in, year-out, gives you the strongest support in its field. This means many more CLOROX selling messages, and much greater impact of CLOROX advertising, than ever before.

SCHEDULED IN OUR TERRITORY and in many other metropolitan markets, the new CLOROX television spots supplement and tie in with regular CLOROX advertising which appears consistently in more than 600 daily newspapers from coast to coast, in 14 major magazines and on colorful outdoor posters in many principal marketing areas.

TAKE ADVANTAGE OF THE EXTRA IMPACT OF CLOROX TV ADVERTISING! Make an all-out effort to secure CLOROX mass-displays and store-advertising tie-ins in the retail outlets you supply!

EVERY STEP YOU TAKE in the energetic merchandising of CLOROX advertising is an important step toward increasing your profits through increased CLOROX sales!

Very truly yours,

166X

ghtly Bound

FEDERAL TRADE COMMISSION
DEC 4 1957
DATE FILED
COMMISSION EXHIBIT NO. 413-B
IN THE MATTER OF Procter & Gamble
WITNESS Trump
ACE REPORTING CO., Official Reporters
By

CX 413-B
Trump

CLOROX CHEMICAL CO.
Oakland, California

FOR IMMEDIATE RELEASE

Commission's Exhibit No. 413A-B
Release of Clorox Chemical Co. April 22, 1957

PROCTER & GAMBLE TO ACQUIRE ASSETS OF CLOROX CHEMICAL CO.

OAKLAND, CALIF., April 22, 1957. An agreement was reached today for the transfer of the assets of Clorox Chemical Co. to The Procter & Gamble Company in return for common stock of the latter concern, subject to the usual examination and working out of certain details.

The agreement has been ratified by the Board of Directors of Clorox Chemical Co., and is subject to ratification by the Board of Directors of Procter & Gamble and by the stockholders of Clorox Chemical Co., who will be asked to approve the transaction at a special meeting to be held at a later date.

As a result of the exchange of assets for Procter & Gamble stock, Clorox stockholders are expected to receive Procter & Gamble stock in the ratio of 8-1/2 shares for each 10 shares of their present Clorox stock.

The announcement was made by W. J. Roth, President of Clorox Chemical Co. In commenting, Mr. Roth said, "We are satisfied that the transaction is in the best interest of our stockholders, and we can think of no better way to assure the future of our people than to fit them into the fine Procter & Gamble organization."

Howard Morgens, Executive Vice President of Procter & Gamble, pointed out, "While this is a completely new business for us, taking us for the first time into the marketing of a

4/22/57 RELEASE (continued)

household bleach and disinfectant, we are thoroughly at home in the field of manufacturing and marketing low priced, rapid turn-over consumer products. We plan to establish a wholly owned subsidiary of Procter & Gamble which will continue to operate the Clorox business with its present organization and through its present distributor setup. It is expected that the operating headquarters will remain in Oakland."

Clorox Chemical Co. is solely concerned with manufacturing and marketing the well-known household bleach and disinfectant, Clorox. It has manufacturing plants in various parts of the country, and employs a total of 380 people.

168X

FEDERAL TRADE COMMISSION
DOCKET NO. 6021 EXHIBIT NO. 413
IN THE MATTER OF The P. & G. Co.
DATE 4/16/58 WITNESS
ACE REPORTING CO., INC.
BY

Tightly Bound

FEDERAL TRADE COMMISSION
IN THE MATTER OF
DATE 4/17/57 DOCKET
ACE REPORTING CO.

ERWIN, WASEY & COMPANY
Advertising
SAN FRANCISCO

4 col. x 111/2 in.—Newspaper—REVISED

CX 418
Shaw
4/17

NO COUPON NEEDED!

FREE!

ONE QUART CLOROX

WITH EACH HALF GALLON CLOROX PURCHASED!

For Limited Time! Buy Now!

AT YOUR GROCER'S!

Offer good only in Los Angeles County north to and including the city of San Fernando



You get extra values in Clorox. It's ultra-refined, free from caustic, an exclusive, patented quality-feature that makes Clorox

...extra-kind to your linens!
...extra-efficient in disinfecting!
...extra-gentle in personal use!

And now you get the EXTRA BIG BARGAIN . . . one quart Clorox free with each half gallon Clorox purchased.

AMERICA'S FAVORITE BLEACH AND HOUSEHOLD DISINFECTANT

CLOROX
FREE FROM CAUSTIC

Disinfecto
DISINFECTS BLEACHES REMOVES STAINS

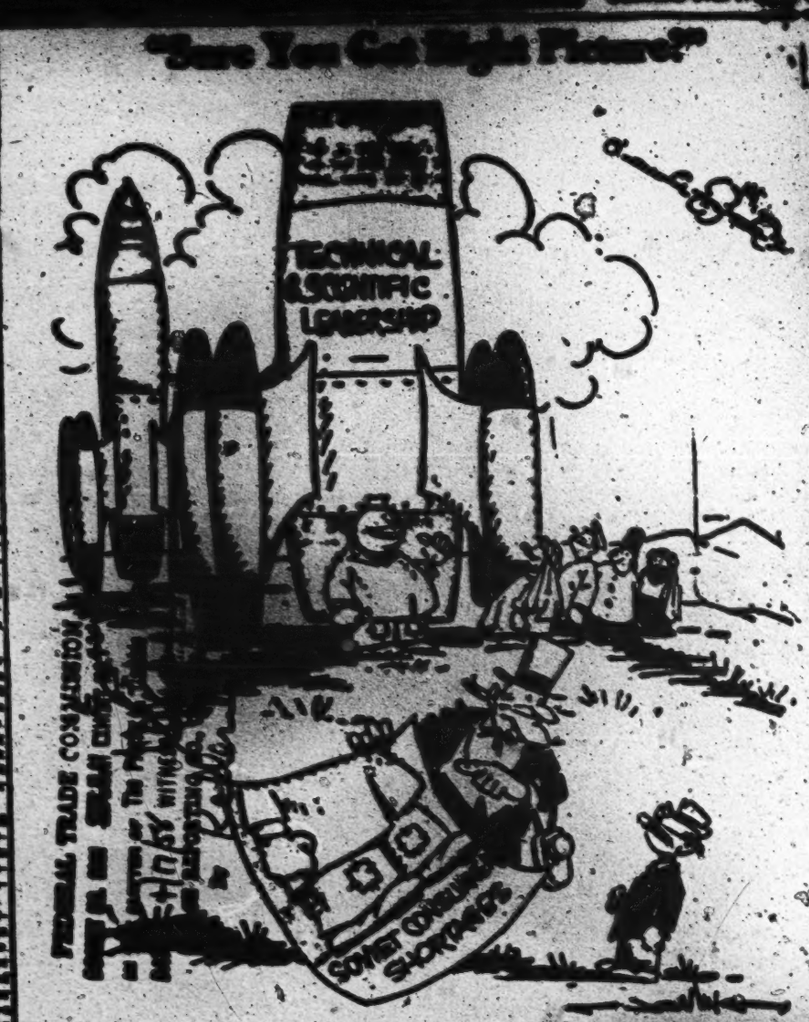
NO REDUCTION IN STRENGTH!

SAME ULTRA REFINED QUALITY!
SAME FULL VALUE AS ALWAYS!

169X

CORRECTED PROOF
This advertisement has been changed. Please destroy

Dealers Plan '58 Chrysler Display Soon



Valley's Grange Hears Delegates

MARKHAM, Oct. 24—Ray Lovell, master, and Mrs. Lovell were guests on State Grange at the regular meeting of the Grange Monday evening.

Members will attend a joint installation of officers of subordinate Granges and Pomona Grange on Saturday, Oct. 26.

Mrs. Ray Cook, lecturer, gave a reading and Mrs. Russell Gilbert rendered the presentation of a play by Mrs. Ray Hamilton, who is leading the community festivals. Refreshments were served by Mr. and Mrs. Ray Cook.

Next meeting of Valley Grange will be Nov. 4 at 8 p.m.

TEACHER FIRED

SAN RAFAEL, Calif., Oct. 24 (U.P.)—Trustees of the Dixie school district voted 3-2 last night to fire Edward L. Hamilton, seventh grade teacher who refused to answer questions from the House un-American activities subcommittee.

Mayor Fred W. Allen, who, with Mrs. Allen, opened northshore, the port's deep-water alley to send its initial shipment of the season to Japan.

PUMP REPAIRING
Meadow Gold MILK
GROCERY

Hot Salt Filed



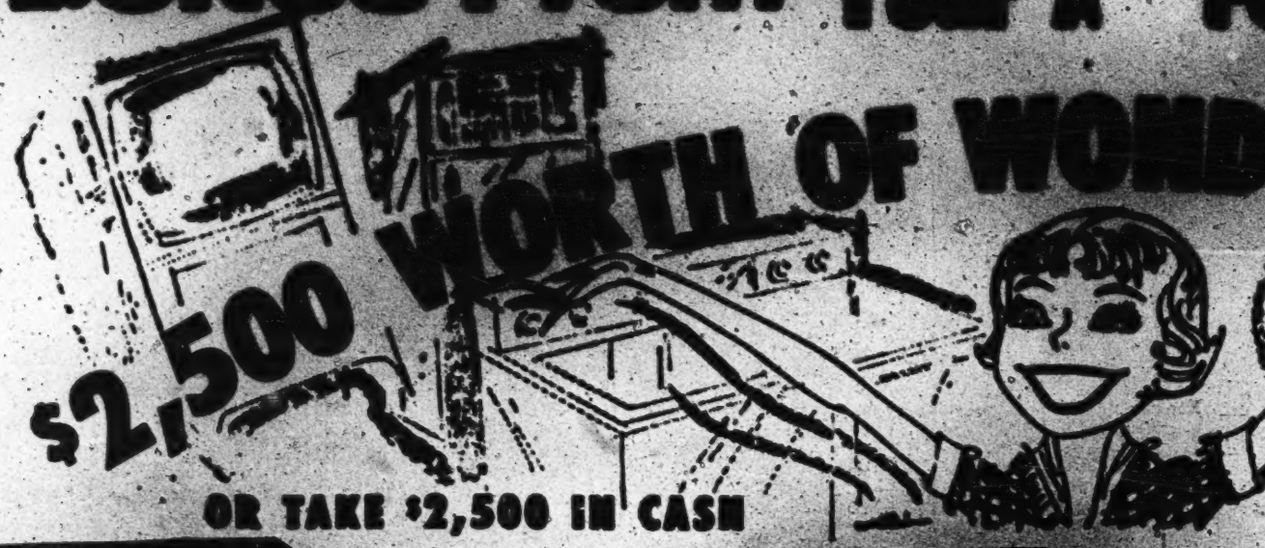
"SPECIAL PURPOSE" SHOE-IN FEATURES
All-leather CHILD LIFE Arch Preserver Shoes are endowed with "special purpose" built-in features. They're part and parcel of the "regular-shoe-other-kids-wear."
Williams SHOES
IN THE FIDELITY BANK BUILDING
READ TIMES-NEWS WANT ADS.

Introductory
NEW PALMOLIVE
1 Bar Yours for only 1¢ when you buy 3 at regular price
1¢ SALE
Offer Good At Your Dealer's Only While Special Limited Bars Last! Be HURRY!
NEW LATHER! NEW FRAGRANCE! NEW COLOR! NEW WRAPPER!

BONUS From Your A&P FOOD MARKETS
$2,500 WORTH OF WONDERFUL APPLIANCES
OR TAKE $2,500 IN CASH
Entry Blanks Here for Procter & Gamble's $60,000 Wife-Saver Contest
AG FOOD MARKETS

BONUS From Your A&P FOOD MARKETS

$2,500 WORTH OF WONDERFUL APPLIANCES



OR TAKE $2,500 IN CASH

Entry Blanks Here for Procter & Gamble's $60,000 Wife-Saver Contest

Write the store's name on your Wife-Saver entry blank. If you are one of the first five winners, we will give you a bonus of $2,500 worth of household appliances, or $2,500 in cash, in addition to your prize from Procter & Gamble.



SPIC & SPAN 7c off
Giant Size 91c
Regular size 31c

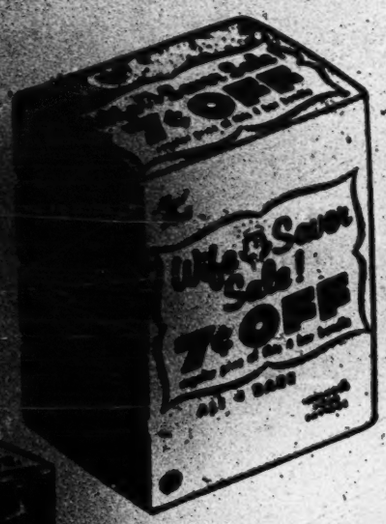
DASH Big Value Jumbo size 2.49

TIDE Giant Size with coupon 83c

DUZ Economy Giant size 85c



OXYDOL 7c off Reg. size 2 for 65c
Giant size 79c



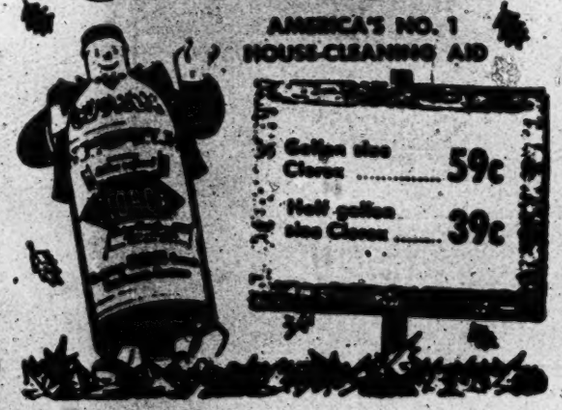
ZEST
Deodorant bar Bath size ..... 2 for 41c

ZEST
Deodorant bar Regular size ..... 2 for 31c

LAVA
Gets dirty hands really clean.
Large Size ..... 2 for 31c

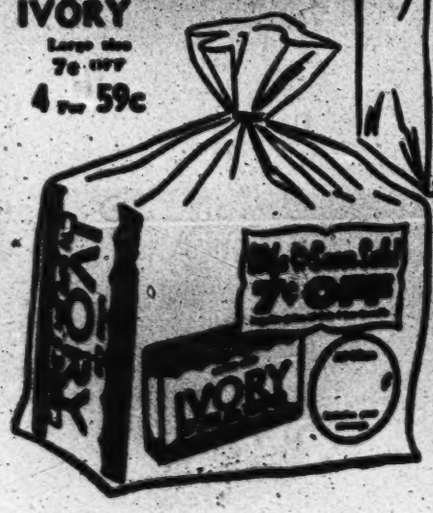
CASCADE
Powdered soap. Regular size 45c

CLEAN UP WITH CLOROX



IVORY
Large size 7c off
4 for 59c

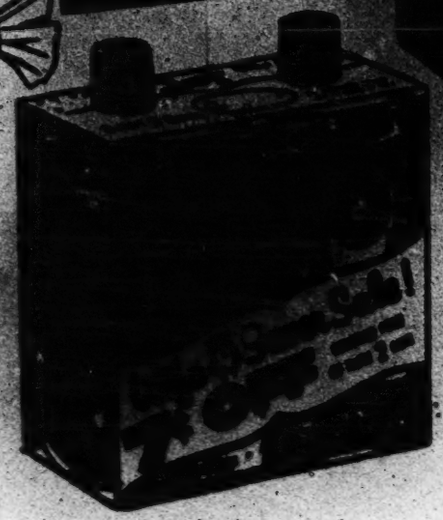




IVORY 7c off med. size 6 for 59c

PERSONAL IVORY Baby mild skin care 4 bars 29c

IVORY FLAKES For the things you wash by hand. Reg. size 36c



CAMAY Bath size beauty bar 2 for 31c

CAMAY 7c off Reg. size 4 bars 37c

JOY 7c off Giant size 68c
Regular size ..... 2 for 75c

Ivory Snow Mild, gentle Regular size 36c



KIRK'S CASTILE Hard Water Soap ..... 2 for 21c

CHEER DETERGENT Giant size Economy pkg. 83c

DREFT DETERGENT For gentle washing Giant size 83c

Comet Cleanser The scented cleanser cuts cooking grease. Giant size 23c

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PAGE

Commission's Exhibit No. 423
Clorox Chemical Co. Reprint

FEDERAL TRADE COMMISSION
DOCKET NO. 6401 HEARING EXHIBIT NO. 622
IN THE MATTER OF Procter & Gamble Co.
DATE 4/13/53 WITNESS
ACE REPORTING CO., Official Reporter
By



Heintz-Cooper Company—Advertising—San Francisco, California

Adv. No. 53598—4 col. x 151 lines—Newspapers

FEDERAL TRADE COMMISSION
DOCKET NO. 4-01 COMMISSION EXHIBIT NO. 424
IN THE MATTER OF Parker Pen Co.
DATE 4/5/61 WITNESS Hancock
REPORTER'S CO. Official Reporter

Commission's Exhibit No. 424
Clorox Chemical Co. Reprint



CLOROX makes linens *more than white*... it makes them *sanitary*, too!

Clorox-clean linens distinguish a considerate hostess. They're lovely to look at... safe to use. For Clorox really whitens... it removes dinginess and stains, even scorch and mildew. And Clorox provides added health protection ...no other home laundering product equals Clorox in germ-killing efficiency!

Clorox is extra gentle to your finest white and color-fast cottons and linens... for, thanks to an exclusive patented formula, it's free from caustic. And Clorox, a liquid, contains no gritty particles to damage your wash, washer or dryer. Important, too: Clorox deodorizes... so your wash smells sunshine-fresh, even when dried indoors!



You'll enjoy inviting guests into your CLOROX-clean kitchen!



A Clorox-clean kitchen is another tribute to your housekeeping ... a further protection to health. For, in routine cleaning, Clorox deodorizes, removes stains ... and, best of all ... provides a type of disinfection recommended by public health authorities. See label directions for the many ways Clorox can help you.



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CX 429(1)

Erie #2

FEDERAL TRADE COMMISSION
DOCKET NO. 8931 EXHIBIT NO. 429A
IN THE MATTER OF The Procter & Gamble Company
DATE 4/17/58 WITNESS
ACE REPORTING CO., Official Reporter
By

January 24, 1953

Commission's Exhibit No. 429A-B
Letter to The Paul E. Kroehle Co. January 24, 1958

The Paul E. Kroehle Co.
304 Western Reserve Bldg.
1468 West 9th Street, N. W.
Cleveland 13, Ohio

Gentlemen:

CLOROX BREAKS WITH A BIG BARGAIN OFFER IN ERIE COUNTY IN FEBRUARY!

A regular $1.00 Ironing Board Cover is being offered for just 50c with each purchase of CLOROX.

A special collar on every CLOROX bottle features this bargain offer. And an order blank on the back of each collar provides for direct mailing of the premium to the customer by clorox.

THIS MEANS THAT RETAILERS CAN RING UP EXTRA CLOROX SALES...WITHOUT EXTRA WORK...and that means you can expect an exceptionally enthusiastic response to this CLOROX promotion from the trade!

CASH IN ON THIS BIG MONEY-MAKING CLOROX PROMOTION TO THE FULLEST EXTENT!

A special newspaper advertisement featuring Ironing Board Cover offer, is scheduled to run in the Erie Times-News on February 20th/21st. Quantities of the display material and tie-in mats have been mailed to you under separate cover...and be sure to mail the CLOROX bulletin (enclosed) promptly to all of your trade contacts in the Erie market; along with a reprint of the special newspaper advertisement, reprints of which are being shipped to you by our advertising agency.

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 COMMISSION EXHIBIT NO. 2218

The Paul E. Kroehle Co.
Cleveland, Ohio

January 24, 1958

ADDITIONAL CLOROX ADVERTISING SUPPLEMENTS IMPACT OF SPECIAL PROMOTION IN FEBRUARY!

In addition to Ironing Board Cover Promotion advertisement of February 20th/21st, another dominant CLOROX newspaper advertisement will appear in the Erie Times-News on February 27th/28th. A full-page CLOROX advertisement carries its selling message in the February issues of Good Housekeeping, Better Homes & Gardens, Ladies Home Journal and Parents' magazines. And a stepped-up schedule of CLOROX television advertising in Erie County will supply additional selling support during the month of February.

Reprints of the two CLOROX newspaper ads and the magazine ad have been sent to you in quantity under separate cover for mailing with your bulletin to the trade. Please send us a copy of your bulletin and advise us of the date on which you mail this bulletin to the trade.

Very truly yours,

THE CLOROX COMPANY

Neil Shaver
Advertising Manager

NS:del
Encl.

cc: Arthur G. Larcay
cc: Cleveland Plant

bcc: Mr. Trimpe
Mr. Oster

176X

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Commission's Exhibit No. 437
Freight as a percentage of gross sales price per case

FREIGHT AS PERCENTAGE OF GROSS SALES PRICE PER CASE

Fiscal Year Ending	Percent of Average Selling Price
June 30, 1952	12.1%
" " 1953	12.2%
" " 1954	12.0%
" " 1955	11.3%
" " 1956	10.9%
" " 1957	10.2%
Month of July 1957	9.8%
Aug. 1, 1957-Feb. 28, 1958	10.5%

EDERAL TRADE COMMISSION
4437
4/17/58 WITNESS
REPORTING CO., Official Reporters
By
177X
FEDERAL TRADE COMMISSION
ACE REPORTING CO., Official Reporters
By
DATE
WITNESS

Commission's Exhibit No. 438
Purex Corp. annual report for 1957

PUREX CORPORATION, LTD.

THIRTIETH ANNUAL REPORT 1957

FEDERAL TRADE COMMISSION
DOCKET NO. 8931 EXHIBIT NO. C-X 438
IN THE MATTER OF The Procter & Gamble Company
DATE 7-22-58 WITNESS
ACE REPORTING CO., Official Reporter

178X

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PUREX CORPORATION, LTD. AND ITS SUBSIDIARIES

STATEMENT OF INCOME

Fiscal year ended June 30

	1957	1956	
	Consolidated	Purex Corporation Ltd.	Manhattan Soap Company, Inc. and subsidiaries
Sales, less returns, discounts and allowances	$50,293,497	$34,850,430	$11,736,461
Cost of goods sold and delivery expense	$34,679,035	$24,614,675	$ 7,518,097
Selling, general and administrative expense	11,650,216	7,408,747	4,073,700
Depreciation of fixed assets	858,566	620,261	164,784
Interest and expense on long term debt	266,832	130,498	42,264
Loss on cosmetics division, net			220,331
Provision for federal and Canadian income taxes (the 1957 provision is after $520,000 reduction resulting from loss carry forward of Manhattan Soap Company, Inc.)	930,000	1,075,000	12,900
	$48,384,649	$33,849,181	$12,032,076
Net income (loss) for the year	$ 1,908,848	$ 1,001,249	$(295,615)

CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

Fiscal year ended June 30, 1957

	Capital	*Retained Income*
Balance at beginning of year:		
Purex Corporation, Ltd.	$4,111,251	$2,727,806
Manhattan Soap Company, Inc. (136,000 shares of capital stock of Purex Corporation, Ltd. issued for all the outstanding stock of Manhattan)	405,664	656,769
	$4,516,915	$3,384,575
Net income for the year, per accompanying statement		1,908,848
Dividends paid:		
In cash, 80 cents per share		(629,915)
In stock (three per cent) paid September 30, 1956— 22,003 shares stated at $19 per share, approximate market at declaration date	418,057	(418,057)
Cash paid in lieu of issuing fractional share interests aggregating 1,102 shares		(20,939)
Proceeds from issuance of 10,271 shares under option agreements	90,306	
Balance at end of year	$5,025,278	$4,224,512

see notes on page 16

PUREX CORPORATION, LTD. AND ITS SUBSIDIARIES

Incorporated in California

ASSETS	June 30 1957	June 30 1956
CURRENT ASSETS:		
Cash	$ 1,898,458	$ 724,010
United States Government securities, at cost	900,000	650,000
Accounts receivable, less $22,600 provision for doubtful accounts	3,397,594	2,842,573
Inventories, at cost (not in excess of market)	5,312,732	5,629,846
Unexpired insurance, deposits and advances	337,863	344,815
Total current assets	$11,846,647	$10,191,244
INVESTMENT in wholly owned subsidiary in Australia, at cost (not consolidated)	$ 86,000	$ 86,000
FIXED ASSETS, at cost less accumulated depreciation of $3,878,743 and $3,571,165, respectively	$ 7,205,218	$ 7,296,365
	$19,137,865	$17,573,609

NOTES TO FINANCIAL STATEMENTS

NOTE 1—PRINCIPLES OF CONSOLIDATION:

The consolidated financial statements include the accounts of the Company and the following subsidiaries:

Manhattan Soap Company, Inc., a wholly owned domestic subsidiary.

Hasking Brothers & Company, a wholly owned subsidiary of Manhattan, until its complete liquidation in August, 1956.

Fairbanks Soap Company, Limited, a wholly owned Canadian subsidiary of Manhattan.

A relatively small wholly owned Australian subsidiary of the Company has not been consolidated.

On July 30, 1956, the Company acquired the entire outstanding stock of Manhattan Soap Company, Inc., in exchange for 136,000 shares of the Company's capital stock. This transaction is deemed to be a pooling of interests of both companies, and the accompanying balance sheet at June 30, 1956 includes the assets and liabilities of the Manhattan companies. The accompanying income statement for the twelve months ended June 30, 1956, sets forth, separately, the operations of the Company and of the Manhattan companies.

NOTE 2—FEDERAL AND CANADIAN INCOME TAXES:

The provision for federal income taxes for the year ended June 30, 1957 is approximately $520,000 less than would be required without benefit of the provisions of the Internal Revenue Code which permit the carryforward, for tax purposes, of losses sustained in prior years by Manhattan Soap Company, Inc.

The estimated liability for income taxes at June 30, 1957 shown in the accompanying balance sheet includes roundly

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CONSOLIDATED BALANCE SHEET

LIABILITIES AND CAPITAL	June 30 1957	June 30 1956
CURRENT LIABILITIES:		
Accounts payable and accrued expenses	$ 2,875,104	$ 4,308,675
Current installment on long term debt	415,000	346,000
Estimated federal and Canadian income taxes	1,427,971	1,680,499
Total current liabilities	$ 4,718,075	$ 6,335,174
LONG TERM DEBT		
At June 30, 1957, $2,170,000 is represented by a 4½% note payable in minimum annual installments of $415,000 and $3,000,000 is represented by a 5% note payable in similar installments after discharge of first note	$ 5,170,000	$ 3,336,945
STOCKHOLDERS' EQUITY		
Represented by 799,723 shares of $1 par value capital stock outstanding at June 30, 1957 (767,449 shares were outstanding at June 30, 1956 after giving retroactive effect to the issuance in July 1956 of 136,000 shares for all the outstanding stock of Manhattan Soap Company, Inc.); 2,500,000 shares authorized:		
Capital	$ 5,025,278	$ 4,516,915
Net income retained in the business	4,224,512	3,384,575
	$ 9,249,790	$ 7,901,490
	$19,137,865	$17,573,609

$425,000 for unsettled excess profits taxes and interest thereon relating to the returns of Manhattan Soap Company, Inc. for the years 1940 through 1945. On the basis of a tentative agreement reached with the taxing authorities during July 1957, taxes and interest to be paid for those years will approximate $350,000. The interest portion will be deductible in computing future years' taxes. The tentative settlement is subject to review and approval of the Congressional Joint Committee on Internal Revenue Taxation.

NOTE 3—STOCK OPTIONS:

At the beginning of the year, there were outstanding options granted to certain key employees covering 20,851 shares of capital stock. During the year 599 additional shares came under option under the provision of the option agreement relating to adjustments for stock dividends. Also during the year options covering 10,271 shares were exercised at prices of $9.03 and $8.77 per share, leaving options outstanding at June 30, 1957 for 11,179 shares at $8.77 per share.

NOTE 4—RETAINED INCOME:

At June 30, 1957 retained income available for dividend purposes under the terms of the loan agreements was approximately $1,375,000; however, a minimum working capital requirement restricted the amount available to approximately $500,000.

NOTE 5—LOSS IN 1956 ON COSMETIC DIVISION OF MANHATTAN SOAP COMPANY, INC.:

The loss of the cosmetic division of Manhattan Soap Company, Inc. in the fiscal year ended June 30, 1956 shown on the accompanying statement of income represents sales of cosmetics less cost of goods sold, advertising, promotion and other selling expenses. It does not include any allocation of administrative expenses or interest expense on borrowed money. The cosmetic division was discontinued in June 1956.

PRODUCTS

Purex is the manufacturer of a diversified line of thirteen household cleaning products, six of which are in national distribution. In addition, we market thirty-one industrial products including such items as swimming pool chlorine, automatic dishwashing compounds, floor cleaners, abrasive cleansers, and wetting agents.

Nationally Distributed Consumer Products

New BLUE DUTCH CLEANSER – Foams, *bleaches*, rinses fast! Cleans blue-white clean.

PUREX BEADS-O'-BLEACH – Bleach in safe, *dry* form. Whitens like liquid bleach – yet harmless to clothes.

TREND – Light-duty detergent for dishes and fine fabrics. "It's the brand the smart girls buy."

LIQUID TREND – Popular liquid detergent. Especially recommended for dishes and personal laundry.

SWEETHEART SOAP – Sweet, mild, luxury soap. "It agrees with your skin."

BLU-WHITE — Brightens and blues while it washes. Whitens "tired" gray nylon.

Regional Products

PUREX LIQUID BLEACH — Gentle, yet effective — safe for Nylon, Orlon, Dacron, and Rayon. Made by the exclusive Iltrafil® process.

NEWS — Economy priced heavy-duty detergent with oxygen bleach. An all-purpose washday detergent.

PROTEX SOAP — White deodorant bar. For bath and complexion. Popular oval shape.

PUREX DRAIN OPENER — Keeps drains free-flowing. Quick, efficient, economical.

REX LYE — Quick dissolving high-test flakes.

BLUE BARREL LAUNDRY SOAP — All-purpose white laundry soap for floors, woodwork, dishes, clothes.

PUREX BOWL CLEAN — For toilet bowl sanitation.

ADVERTISING IS THE LIFE BLOOD OF OUR BUSINESS

We are in an industry in which brands must be "pre-sold to the consumer." It is therefore an industry of big-scale advertising. Since Purex became a national advertiser our advertising appropriations have necessarily grown to an amount which places us among the top 100 advertisers in all business classifications.

National network television is the major medium in our advertising program. It is supplemented by women's magazine and newspaper supplement advertising. It is further reinforced by sales promotions such as the "'SweetHeart' Dream Come True Contest" and the "Family Shopping Spree." The former was a highly successful promotion in March and April 1957; the latter started in August 1957. *Food Topics*, a leading grocery trade journal, polled 7300 of the leading grocery chain and supermarket retailers of the country to determine the ten sales promotions in the grocery field during the past year which sold the most merchandise for the retailers. The "'SweetHeart' Dream Come True" promotion was voted third most effective among all the hundreds that went through the grocery stores of the nation.

Beginning late in September, Purex sponsors for the first time on Columbia Broadcasting System's nationwide television network the "Perry Mason Show." This is an evening one-hour-weekly detective story program of which

we are the sponsors on alternate weeks. Over 75,000,000 copies of Perry Mason books have been sold, a fact which establishes Perry Mason's creator, Erle Stanley Gardner, as the most widely read writer of American detective fiction and probably ranks Perry Mason as the best-known character in American fiction of all types. Beginning October 3, we are also co-sponsoring a national network, 15-minute afternoon television show, "Beat The Clock," starring Bud Collyer, on CBS.

Typical of the outcome of our consumer research on the motivations for buying that impel Mrs. Consumer to take one brand instead of another is the current "SweetHeart" soap advertising in magazines and TV, illustrated here. It presents a completely new approach in toilet soap advertising. The advertising is not only attracting favorable attention from Mrs. Consumer, but is creating in her mind the brand image of "SweetHeart" soap which this fine quality product should have and which was the target of our advertising plans. The research that produced this advertising is also giving us an improved understanding of the subtle factors influencing Mrs. Consumer, and is enabling us to align our advertising, packaging and merchandising work in the stores along new and more effective lines, thus making our advertising dollars more productive.

PLANT LOCATIONS

Thirteen manufacturing plants span the United States and Canada. with packaging facilities in Mexico, Cuba. and the Philippines and a wholly-owned subsidiary in Australia.

Bleach and Detergent Plants:

SOUTH GATE. CALIFORNIA – (Home Office)
ST. LOUIS. MISSOURI

Liquid Bleach Plants:

TACOMA. WASHINGTON
DALLAS. TEXAS
NEW ORLEANS. LOUISIANA
SAN LEANDRO. CALIFORNIA
ATLANTA. GEORGIA
MEMPHIS. TENNESSEE
WESTON. ONTARIO. CANADA

Cleanser Manufacturing Plants:

EAST CHICAGO. INDIANA
SOUTH GATE. CALIFORNIA
BRISTOL. PENNSYLVANIA
WESTON. ONTARIO. CANADA
SYDNEY. AUSTRALIA

Cleanser Packaging Plants:

MEXICO CITY. D.F. HAVANA. CUBA
MANILA. P.R.

Soap Manufacturing Plants:

BRISTOL. PENNSYLVANIA
TORONTO. ONTARIO. CANADA
OMAHA. NEBRASKA

CX443

No. 2

Commission's Exhibit No. 443
Purex Corp. net sales of liquid bleach 1952-1957

PUREX CORPORATION, LTD.

NET SALES OF LIQUID BLEACH EXCLUDING FOREIGN

1952	6/30/52	$ 9,482,097
1953	6/30/53	10,838,432
1954	6/30/54	10,898,053
1955	6/30/55	11,916,298
1956	6/30/56	12,691,562
1957	6/30/57	13,648,103
		$69,474,545

FEDERAL TRADE COMMISSION
DOCKET NO. 6321 EXHIBIT NO. CX 443
IN THE MATTER OF The Purex Corporation, Ltd.
DATE 4-22-58 WITNESS S Kaminow
ACE REPORTING CO., Official Reporter
By Ezra

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Commission's Exhibit No. 447
Leading National advertisers—12 months 1957

LEADING NATIONAL ADVERTISERS - 12 MONTHS 1957

COMPANY	TOTAL	MAGS GENERAL	MAGS FARM	SPOT TV	SUNDAY MAG. SECS.	NETWORK TV	NETWORK RADIO
Procter & Gamble	$83,108,351	$ 8,917,358	$ 213,508	$25,916,840	$ 1,014,630	$47,046,015	NR*
General Motors	43,356,854	23,946,832	1,474,490	1,522,630	3,679,465	12,733,437	NR*
Chrysler Corp.	30,945,944	10,362,273	386,270	NA**	1,281,625	18,915,776	NR*
Colgate-Palmolive	36,817,198	4,661,664	96,490	7,739,080	4,944,251	19,375,713	NR*
Ford Motor Co.	31,518,192	11,867,425	1,455,522	3,436,050	1,735,991	13,023,204	
Lever Brothers	23,565,993	4,476,956	NR*	7,642,980	2,791,748	16,297,289	NR*
Purex Corporation	2,902,088	651,799	NR*	NA**	187,785	2,052,504	NR*

* Not reported

** Not available

Total expenditure is PIB figure. Does not include Spot TV -- Spot TV first reported 1956

Source: Publishers Information Bureau

FEDERAL TRADE COMMISSION
DOCKET NO. [redacted] EXHIBIT NO. 447
IN THE MATTER OF [redacted]
DATE 4/24/58 [redacted]

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BALE PA. LIQUID BLEACH MERIT
(NEW FORMULA)

	4/1-4/20	4/20-5/27	5/27-6/22	6/22-7/22	7/22-8/19	8/19-9/16	9/16-10/14	10/14-11/11	11/11-12/9	12/9-1/6	1/6-2/3	2/3-3/3	3/3-3/31
SHARE OF TOTAL LIQUID BLEACH MARKET*													
PUREX	-	-	-	-	-	-	-	6.9%	32.5%	12.0%	10.1%	7.1%	
CLOROX	56.2%	55.6%	51.0%	50.5%	52.5%	53.3%	51.7%	49.0%	35.3%	63.0%	52.0%	52.9%	
303	26.0%	28.1%	29.7%	29.6%	29.0%	29.1%	30.0%	25.2%	17.3%	13.2%	19.7%	22.3%	
ALL OTHER	17.8%	16.3%	19.2%	19.9%	18.7%	17.6%	18.3%	18.9%	14.9%	11.8%	14.2%	17.7%	
AVERAGE PRICE PER UNIT SOLD* (INFORMATION NOT AVAILABLE BEFORE 10/14/57)													
PUREX(NEW BOTTLE ONLY)								QT-21 1-37 0-59	QT-21 1-37 0-60	QT-21 1-37 0-60	QT-21 1-38 0-60	QT-22 1-38 0-58	
CLOROX								QT-20 1-32 0-57	QT-18 1-32 0-52	QT-18 1-31 0-55	QT-18 1-32 0-54	QT-19 1-36 0-57	
303								QT-20 1-36 0-57	QT-20 1-35 0-58	QT-20 1-36 0-57	QT-20 1-36 0-57	QT-20 1-37 0-58	
ADVERTISING SCHEDULE - PUREX (from Purex records)													
PUREX NEWSPAPER (TIMES & SIZE) EACH 1,000 LINE AD								2 ads	2 ads	8 ads	4 ads	6 ads	4 ads
TELEVISION SPOT ANNOUNCEMENT WBEN TV & WBRE TV (20 second & 60 second spots)								TOTAL ADVERTISING $'s 14,266.00 NEWSPAPER 5,976.00 SPOT TV 7,383.00 NETWORK TV [illegible] (apportioned)		1941.00 836.00			
								X TV spots 34 TV spots		30 TV spots 35	30 TV spots 37	28 TV spots 26	18 TV spots
ADVERTISING SCHEDULE - CLOROX (2) NEWSPAPER (TIMES & SIZE)									AD ERIE spns 11/25/57- 3¢ off qts 5¢ off 2½s 7¢ off gal. ERIE COUNTY ONLY..	1800 lines	3600 lines	1800 lines	3600 lines
TOTAL ADVERTISING $'s (all Newspapers)													
TELEVISION WBRE-TV & WNEP-TV								Total Advertising $'s Newspapers TV Spots		$6,527.00 est 2,432.00 4,095.00 100 TV spots	100 TV spots	100 TV spots	100 TVspots
ADVERTISING SCHEDULE - 303 NEWSPAPER													
TELEVISION													
[illegible] I PUREX													
II CLOROX													
III 303													
[illegible] I PUREX													
II CLOROX													
[illegible] PUREX													
									QT-22 1-37 no 7. QT-18 1-30 0-48	QT-21 1-37 no 7 QT-18 1-30 0-48	QT-20 1-37 0-58½ QT-20 1-35 0-58		
									QT-16 1-30 0-48	QT-16 1-30 0-48	QT-20 1-37 0-58 QT-19 1-35 0-59		
									Floor display. picture of new	Floor display rear of store.	Floor display qts 8% dist	Floor display qts & ½'s 4% dist	

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Commission's Exhibit No. 454A-C
Purex Corporation Memorandum dated October 12, 1957 "To All Sales Managers, Supervisors and Salesmen"

Purex Sales Meeting
Sat. October 12, 1957
Statler Hotel
St. Louis, Mo.

BLEACH GOES MODERN! BLEACH GOES MODERN! BLEACH GOES MODERN!

NEW "PUREX" LIQUID BLEACH

FEDERAL TRADE COMMISSION
DOCKET NO. 6647 EXHIBIT NO. 454A
IN THE MATTER OF Purex Corporation
DATE 4/24/62 WITNESS
ACE REPORTING CO. Official Reporters
D.C.

TO: All Salesmanagers, Supervisors, and Salesmen in Test Markets.

Gentlemen:

Beginning Monday, October 14, 1957 you men in this meeting will start a sales campaign that will probably be the most important sales assignment we have ever had in Purex history. We say this because today we have presented to you New PUREX Liquid Bleach a product that embodies the greatest development and advancement in the history of liquid bleach. It is doubly important, because PUREX Liquid Bleach is the foundation product of our company and still the number one product in our line.

This NEW PUREX LIQUID BLEACH as we have told you in this meeting is the result of two years of intensive study, research, and marketing plans to give you gentlemen to sell the most forward, modern product and package in the liquid bleach field today. Here are the principal selling features of our new package and product.

THE NEW PACKAGE

1. IMPROVED BOTTLE AND HANDLE

As you have seen this new bottle and jug represents an almost revolutionary departure from the old ring handle container. The handle is 50% stronger and by test it is 4 times stronger than the Roman Cleanser type of bottle or jug. Women for years have complained about the cumbersomeness and handling of particularly the 1/2 gallon and gallon jug.

2. THE NEW PRODUCT

PUREX now has an additive for "energized" bleaching that gives an action that has greater and faster penetration in washing and cleansing and thus does a more effective job. Its energized!

3. THE NEW LABEL

In keeping with our theme "Bleach Goes Modern"! we have a simplified bright clean label with definite feminine appeal telling in 4 words just what it is "NEW MODERN PUREX BLEACH."

The back panel of the label also shows improved organization with its separate boxes for usage and clearly and simply defines household and industrial use and directions.

The side panel is an added feature to our label and represents selling copy of the main advantages on the basic requirements of women consumers today.

THE ADVERTISING

A new concept in bleach advertising has been employed to properly -

(b)

FEDERAL TRADE COMMISSION
DOCKET NO. 6201 COMMISSION EXHIBIT NO. 4574

create the NEW BRAND IMAGE of this product in the housewife's mind. The central theme on all advertising of New Purex will be one of portraying a cheerful, carefree, pleasant to use bleach that makes things easy -- is relaxing and helps hurry through the unpleasant, but necessary household cleaning jobs in a short space of time. A product considerate of her feelings about housework without drudgery and still does that highly efficient job which makes her feel so good about work that has been done -- a job well done.

We have a rounded shcedule of advertising for each test market with real depth saturation that will be so important in getting the housewife to look for and readily recognize NEW PUREX BLEACH the next time she is in her favorite food store.

(Ad schedule for your territory attached to this bulletin)

MATERIAL FOR AND ORDER OF SALES PRESENTATION:

1. Brochure - cover the 1st half of the brochure story and in the middle section where the blown up new jug is shown, open

2. Top Secret Box and hand to the buyer giving him a chance to examine the new package. At this time also we can give him the price information which should be written in his copy of the brochure (prior to your call) that you are going to leave with him. (There is a place for this on the next page in the "Price and Profit" section.)

   The next page shows the display section following the & "Promoting Purex" section and at this time show the --

3. Point of Sale Material, 4 pieces (Banner, Bottlenecker, Stack Card and Shelf Talker)

4. Slick Sheets and Mats - (Note: Be sure the quart jug mat and slick is shown for Erie only)

TEST MARKET DATE

TEST MARKET	TYPE OF PRODUCT	START SELLING
Wichita	Regular	Monday, October 14
Erie	Energized	Monday, October 14
Louisville	Energized	Monday, October 21
Evansville	Regular	Monday, October 21

PRICES AND CODE NUMBERS

	WICHITA		ERIE		EVANSVILLE		LOUISVILLE	
	PRICE	CODE #	PRICE	CODE #	PRICE	CODE #	PRICE	CODE #
Quart	$1.91	1-021	$2.01	1-022	$2.01	1-021	$2.01	1-021
1/2 gal.	1.76	1-031	1.86	1-031	1.86	1-031	1.86	1-031
Gallon	1.90	1-051	2.00	1-051	2.00	1-051	2.00	1-051

SUMMARY AND SPECIAL INSTRUCTIONS:

We have attempted to outline in this bulletin all of the information needed to enable you to do the proper selling job of this new product.

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FEDERAL TRADE COMMISSION (C)
DOCKET NO. 6991 -- COMMISSION EXHIBIT NO. 45-C

Be sure you have all necessary selling material when you leave this meeting. You have been furnished with a small amount of point of sale material today and additional supplies are being sent to your homes. Gentlemen, ours is a great responsibility in selling this new product -- much of the success of NEW PUREX LIQUID BLEACH will depend on how well we do our initial selling and merchandising job in these test markets.

We have every confidence that the selection of you men has been sound to introduce this new product to our customers.

Again we wish to reiterate the importance of doing the best selling job you have ever done -- a great deal in the future of our company in the bleach field will depend upon your forthcoming successful efforts. The degree of success of this selling campaign is now in your hands.

WE HAVE "GIVEN YOU THE BALL" -- NEW PUREX LIQUID BLEACH, WE KNOW THAT YOU WILL RUN WELL WITH IT.

Sincerely,

Alex C. Bruce

ACB/JLP/ci

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Commission's Exhibit No. 458
Purex liquid bleach prices January 1956-April 1958

PUREX LIQUID BLEACH PRICES

NATIONAL LIST PRICES

JANUARY 1956 -- APRIL 1958

Period	Pints	Quarts	Half Gallons	Three Quarts	Gallons
- 1/15/56	$2.07	$1.75	$1.61	---	$1.78
1/16/56 - 4/30/56	2.07	1.75	1.61	$2.16	1.78
5/1/56 - 5/19/57	2.20	1.85	1.70	2.25	1.82
5/20/57 - 11/21/57	2.26	1.91	1.76	2.32	1.90
11/22/57 - 3/9/58	2.26	1.91	1.86	2.32	1.98

FEDERAL TRADE COMMISSION
DOCKET NO. 6821 COMMISSION EXHIBIT NO. 458
IN THE MATTER OF The Procter & Gamble Company
DATE 4/22/58 WITNESS STOLLMAN
ACE REPORTING CO., Official Reporters
By PS

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Commission's Exhibit No. 473
Annual report of Hood Chemical Co. for year ending August 31, 1957

FEDERAL TRADE COMMISSION
DOCKET NO. 6501 COMMISSION EXHIBIT NO. 473
IN THE MATTER OF The Procter & Gamble Company
DATE 5-20-58 WITNESS McDonald
ACE REPORTING CO., Official Reporter
By Bastlea



HOOD CHEMICAL CO. INC.

Annual Report

FOR
THE
FISCAL
YEAR
ENDING
AUGUST 31

195X | 1957

Hood Chemical Co. Inc.

Ardmore, Pa.
November 2, 1957

TO THE STOCKHOLDERS:

The Board of Directors submit, herewith, financial statements for the fiscal year ended August 31, 1957, together with the opinion of our auditors, Price Waterhouse & Co.

Continuing our growth pattern, sales of the year increased 10% while net profit from operations increased 26% over last year. This year we also realized a net gain on sale of plant facilities of $20,066.

The following statement summarizes the changes in financial position during the year.

Income from operation		$128,831
Add depreciation and other charges not representing cash outlay		41,812
		$170,643
Net proceeds from sale of Fullerton Plant and miscellaneous investment		89,535
Decrease in working capital		23,389
		$283,567
Additions to Plant		$173,174
Payment of dividends		35,050
Investment in other assets		36,750
Purchase of treasury stock		38,593
		$283,567

Because of continued increasing freight rates, your Directors decided to sell our plant at Fullerton, Pennsylvania and provide productive facilities closer to our markets. The property was sold in January 1957 and the plant vacated in August 1957. Fifty per cent of the sale price is receivable in monthly instalments over a five-year period and is secured by a mortgage on the land and building. A new plant was constructed at South Plainfield, New Jersey, a picture of which may be found on Page 8 of this report. Our new plant offers every facility for efficiency and we believe will materially reduce operating costs.

Last year our Directors requested authority from the stockholders to establish a restricted stock purchase plan for the benefit of key personnel. Toward that end 30,000 shares of capital stock of the company was purchased in the open market. Subsequently, it was decided not to adopt such a plan and the purchased shares are held in treasury for either future use or cancellation.

Your Directors at the meeting on September 23, 1957 declared a dividend of ten cents per share, payable November 8, 1957 to stockholders of record at the close of business October 22, 1957.

Respectfully submitted for the Board of Directors.

President

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Hood Chemical Co. Inc.

(Incorporated in New York)

STATEMENT OF FINANCIAL POSITION

	August 31, 1957	August 31, 1956
Current assets:		
Cash	$ 329,492.56	$308,194.80
U. S. Government securities at cost	—	24,869.50
Receivable from customers, less reserve	183,944.93	182,013.52
Other receivables and advances	15,750.00	3,700.00
Inventories, not over market:		
Materials and supplies at first-in, first-out cost	149,200.18	185,584.73
Finished products at production cost	126,475.00	94,875.21
Prepaid insurance, etc.	25,143.11	17,412.13
	$ 830,005.78	$816,649.89
Less—Current liabilities:		
Accounts payable	$ 132,272.26	$144,845.96
Accrued compensation and expenses	85,135.02	77,617.89
Estimated taxes on income	147,852.26	106,050.68
	$ 365,259.54	$328,514.53
Net current assets	$ 464,746.24	$488,135.36
Other assets:		
Note receivable secured by mortgage (less $8,250 in current assets)	36,750.00	—
Investment in Chemecon Corp.	12,500.00	25,000.00
Plant assets at cost	826,783.02	746,562.38
Less depreciation	356,082.75	350,254.64
	$ 470,700.27	$396,307.74
Net assets	$ 984,696.51	$909,443.10
Source of net assets:		
Capital stock:		
Authorized 1,000,000 shares of 33 cents par value		
Issued 730,000 shares	$ 240,900.00	$240,900.00
Additional capital paid in by the shareholders	208,195.23	208,195.23
Earnings retained in the business	574,194.58	460,347.87
	$1,023,289.81	$909,443.10
Less 30,000 shares in Treasury at cost	38,593.30	—
	$ 984,696.51	$909,443.10

Hood Chemical Co. Inc.

STATEMENT OF INCOME FOR THE YEAR AND OF RETAINED EARNINGS

	Year ending August 31,	
	1957	1956
Sales	$3,897,514.90	$3,535,227.06
Less discounts and allowances	77,720.93	70,374.26
Net sales	$3,819,793.97	$3,464,852.80
Costs and expenses:		
Cost of products sold	$2,579,873.61	$2,361,772.74
Freight paid on products sold	314,404.71	310,887.96
Selling expenses	431,910.16	390,421.77
Administrative and general expenses	226,574.44	193,485.84
	$3,552,762.92	$3,256,568.31
(Costs and expenses include depreciation 1957—$39,012.68; 1956—$43,497.09)		
Net sales less costs and expenses	$ 267,031.05	$ 208,284.49
Provision for taxes on income	138,200.00	105,900.00
Net income from operations	$ 128,831.05	$ 102,384.49
Gain on sale of plant facilities less $9,000 provision for taxes	20,066.41	—
Net income for the year	$ 148,897.46	$ 102,384.49
Retained earnings since August 31, 1950:		
At beginning of year	460,347.87	362,946.35
Income tax and expense provisions for prior years not required	—	16,917.03
Dividend: 1957—$.05 per share; 1956—$.03 per share	(35,050.75)	(21,900.00)
At end of year	$ 574,194.58	$ 460,347.87

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ONTARIO
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LEWIS
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CONNECTICUT
Hartford
New Haven
Bridgeport
Long Island
ATLANTIC
OCEAN
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NEW YORK DISTRICT

WASHINGTON DISTRICT

LOWER NEW ENGLAND DISTRICT

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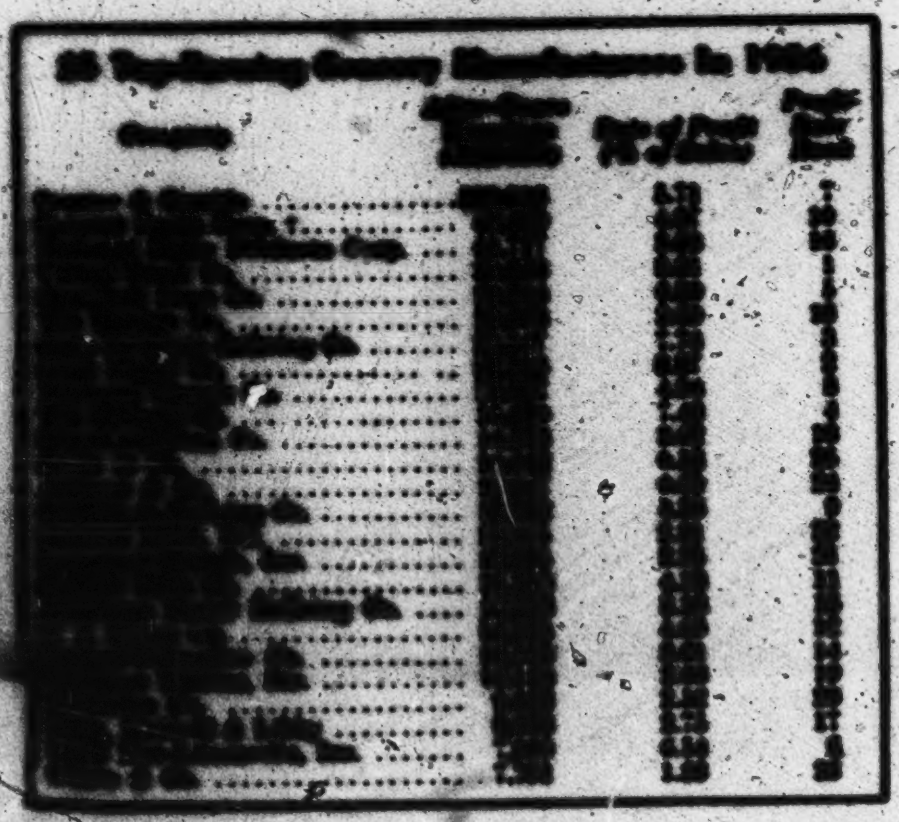
FOOD FIELD REPORTER

The Newspaper of the Food and Grocery Industry

...GC '35 Net Tops Food Field, ...R Financial Survey Shows

By [redacted], Director of Statistical Research, Food Field Reporter

[redacted] Co., Cincinnati, had the highest 1935 profit and United Fruit Co., ... highest ratio of profit per sales dollar) among 25 top flight wholesaling, manufacturing and grocery chains.



...on [redacted] from last year's profit. Furthermore, this increase was effect considerably by ... profits in earning ratio and by [redacted] sold in 1935 compared to 10 per ... by [redacted] in 1934. This combined with

FFR Financial Survey Shows

By Dr. Paul C. Olsen, *Director of Marketing Research*, Food Field Reporter

Procter & Gamble Co., Cincinnati, had the highest 1956 profit and United Fruit Co., ston, the highest rate of profit (per sales dollar) among 25 top firms whose products e sold principally through food and grocery stores.

25 Top-Earning Grocery Manufacturers In 1956

Company	After-Taxes Earnings (Add 000)	Rate of Profit (% of Sales)	Profit-Rate Rank
Procter & Gamble	$59,316	5.71	-
General Foods Corp.	42,400	4.57	10
National Dairy Products Corp.	41,717	3.08	16
United Fruit Co.	30,282	8.81	1
Campbell Soup Co.	29,244	6.80	5
The Borden Co.	23,603	2.89	18
Corn Products Refining Co.	22,547	7.74	3
Scott Paper Co.	22,256	8.57	2
National Biscuit Co.	20,257	4.94	8
The Kellogg Co.	15,060	7.48	4
Ralston-Purina Co.	14,206	3.62	13
Swift & Co.	14,012	0.58	25
Armour & Co.	13,967	0.89	24
California Packing Co.	12,602	4.26	9
General Mills, Inc.	12,225	2.31	22
Standard Brands, Inc.	12,093	2.35	21
Quaker Oats Co.	11,586	4.18	11
American Sugar Refining Co.	10,696	2.16	15
H. J. Heinz Co.	10,184	4.00	12
Colgate-Palmolive Co.	10,518	3.61	14
Foremost Dairies, Inc.	10,164	2.06	19
Carnation Co.	9,028	2.52	20
Libby, McNeill & Libby	8,038	2.75	17
Beech Nut-Lifesavers, Inc.	7,900	6.54	6
Wilson & Co.	6,791	1.23	23

This information is drawn from our annual survey of sales, costs and profits of food trade processors and distributors. The financial details on 257 companies in 16 categories cover three full pages, beginning on page 25.

On this page is the list of the 25 firms with the largest earnings whose products are sold principally through food and grocery stores.

P&G Leads

Procter & Gamble leads the list with a net income in 1956 of $59,316,000, followed by General Foods Corp., $42,400,000; National Dairy Products Corp., $41,717,000; United Fruit Co., $30,282,000; and Campbell Soup Co., $29,244,000.

In rate of profit, United Fruit with 8.81 per cent, was followed by Scott Paper Co., 8.57 per cent; Corn Products Refining Co., 7.74 per cent; The Kellogg Co., 7.48 per cent; and Campbell Soup Co., 6.80 per cent.

The 57 companies in the chain grocery store category headed all other categories in their rate of increase in earnings before and after taxes in 1956 compared to 1955 —25.1 per cent and 25.9 per cent, respectively. Furthermore, this leading position in earnings gains last year was evidently obtained without any widening margins.

This is deduced from the fact that cost of goods sold increased more than sales—16 per cent compared to 12 per cent—from 1955 to 1956 for the 22 companies in the category which make public figures on their gross margins.

Meat-packing companies and confectionery manufacturers showed the next highest gain in after-taxes earnings — 20.6 per cent, but the packers' before-taxes earnings were only 4.5 per cent higher in 1956 than in 1955 while those of the confectionary manufacturers were 22.2 per cent higher.

Among manufacturers, corn products processors had the greatest gain in sales with 17.1 per cent, but it failed to match their increased manufacturing costs. This was reflected in earnings, which increased 11.1 per cent before taxes and 12.4 per cent after.

Wholesale grocers as a group had higher sales increase than any category of manufacturers. But their 18.6 per cent average sales increase was offset considerably by smaller gross margins—9.7 per cent in 1956 compared to 10 per cent in 1955. This, combined with the vagaries of the federal income tax structure, resulted, despite the 18.6 per cent sales increase, in a rise of only 4.3 per cent in after-taxes earnings.

A total of 257 individual firms are included in our compilation this year. The "Processed Foods" group heads the list this year among the 16 categories of food trade suppliers and distributors, with 44 individual companies listed. Next is the "Chain Grocery Store" group with 57 companies.

The figures tabulated here are generally for the calendar years 1956 and 1955. In the case of companies reporting on a fiscal-year basis, the available annual totals corresponding most closely to these calendar years have been used.

Robert A. Leiban, research editor; Michael Lehrhaupt, assistant research editor; Marvin Caul, Henry E. Kaplan and Nancy M. Miki, research associates, had responsible parts in preparing this report. I'm grateful for their help.

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Publishers of Food Field Reporter

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Commission's Exhibit No. 531
Vano liquid bleach wholesale price scale

VANO LIQUID BLEACH

WHOLESALE PRICE SCALE

Case Pack and Unit Size	Jan.-June '56	Eff. July '56	Eff. Aug. '57
12/Qts.	$ 1.56	$ 1.66	$ 1.81
6/½ Gal.	1.32	1.42	1.57

Vano Bleach qts-12ª 5-50 ca 1.86 case
50-100 ca 1.81
2300 lb ca 1.79

" ½ gals 6ª 5-50 ca 1.62
50-100 ca 1.57
2300 lb ca 1.55

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 COMMISSION PLAINTIFF EXHIBIT NO. 531
IN THE MATTER OF Vano Bleach
DATE 6/26/58 TYPE Liquid Bleach
ACE REPORTING CO., Official Reporters
By LZ

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Commission's Exhibit No. 534
1957 Annual report of B. T. Babbitt, Inc.

B.T. Babbitt INC.

1957 ANNUAL REPORT

FEDERAL TRADE COMMISSION
202X DOCKET NO. 6901 COMMISSION RESPONDENT EXHIBIT NO. 534
IN THE MATTER OF PROCTER & GAMBLE
DATE 6-26-58 WITNESS Marcheson
ACE REPORTING CO., Official Reporter
By

To Our Stockholders

At the close of 1956, your Company was faced with a year of consolidation and integration of its business, particularly with respect to the new and diversified lines which it had recently acquired. Implementation of the plans for consolidation and integration, however, moved more slowly than had been anticipated. In addition, important changes took place in the Company's methods of operation and in the management and selling organizations. As a result, your Company's earnings did not reach the hoped for level. By the time this annual report reaches your hands, the problems which were encountered will have been well on the way to solution, and a sound foundation will have been provided for a more optimistic outlook for 1958.

SALES AND EARNINGS

Net sales totalled approximately $21,800,000, compared to net sales of approximately $19,500,000 in the preceding year. Although net sales in 1957 were the largest in the history of the Company, 1957 was the first year in which sales of the products of the companies acquired during 1956 were included on a full year's basis. In 1957 the Company's net loss before income taxes was $1,072,775 as compared with a net loss of $1,133,612 before income taxes for 1956. Your Company's operations for the year 1957 resulted in a net loss of $1,117,977 after income tax credits as against a comparable net loss of $520,612 in 1956.

B.T. Babbitt Inc. AND SUBSIDIARY COMPANIES

The unprofitable operations of the Company in 1957 can be attributed to several factors. Babbitt products continued to meet intensive competition. The complexities of integrating new product lines also contributed to lower earnings. Finally the problem of reorganization of top management took time to solve and had an adverse effect on Company activities. The major portion of the net loss in 1957 was not applied as a loss carry back for tax purposes but will, we trust, be available as a loss carry foward with attendant tax benefits for the Company in the future.

The operations of your Company's Canadian affiliate continue to be profitable. For 1957, the net earnings after taxes of Connecticut Chemicals (Canada) Ltd., in which your Company has a fifty (50%) per cent interest, were $133,800. Because Connecticut Chemicals (Canada) Ltd. is not a wholly-owned subsidiary, your Company's equity in these earnings is not reflected in the financial statements included in this report. The book value of our interest in the accumulated earnings of the Canadian Company was $218,000 at December 1957 but is not reflected in our balance sheet.

The figures available for January 1958 and present estimates of earnings indicate a profit for your Company for the first quarter of 1958.

ORGANIZATIONAL AND OPERATING CHANGES

The acquisitions of Chemicals, Inc. and Connecticut Chemical Research Corp. and its subsidiaries, during the latter part of the year 1956, greatly increased the Babbitt family of products and resulted in a substantial broadening of the Company's production and sales operations. Early in 1957, it became evident that it was necessary to make major changes in the Company's organizational setup in order to manufacture and market the expanded line of products on a more efficient basis.

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For several months, the Company was managed by an Executive Committee, consisting of Mr. H. H. Shincel, Mr. A. O. Samuels and Mr. Samuel Mendleson. During this period, intensive efforts were made to attract new personnel. These efforts reached fruition in December 1957 and have resulted in major changes in the top management of the Company. The new President and Chief Executive Officer, Mr. Marshal S. Lachner, brings to your Company an aggressive and penetrating personality reinforced by many years of successful experience in the soap and cleanser industry. Assisting him are Mr. Michael P. Frawley, who has been elected Executive Vice-President, and Mr. John W. Sugden, who has been elected Vice-President in charge of marketing. These men have also been associated for many years with a large-scale successful operation in the soap and cleanser business. These three individuals, together with other additions to top personnel, bring an infusion of new blood into your Company, which augurs well for the future.

Additionally, our field selling organization has been streamlined, important changes have been made in our pricing policies, incentive pay plans for the sales force have been revised and new marketing approaches have been put into effect.

A new advertising agency has been appointed, headed by men who have also been successful in the soap and cleanser field.

On the production side, operations at two of the three plants in the Chicago area have been discontinued, and their production transferred to the Albany plant resulting in a reduction of inventories and operating costs. One of the two plants has been sold, and the other is in the process of being sub-leased. Steps have been instituted to centralize accounting procedures in order to reduce costs and accelerate reporting.

Consolidated Balance Sheet

Assets

	1957	1956
Current Assets:		
Cash	$ 830,049	$ 602,591
Accounts receivable (less reserves of $62,000 and $88,000 in 1957 and 1956, respectively) — Notes B and C	1,257,193	1,378,011
Estimated Federal income taxes refundable under carry-back provisions of the Internal Revenue Code	238,335	672,771
Prepaid premium for purchase of United States dollars in Brazil	43,025	14,615
Inventories — Notes A and C	2,739,481	3,951,074
Total Current Assets	5,108,083	6,619,062
Fixed Assets — at cost — Note C:		
Land and land improvements	246,620	302,596
Buildings and leasehold improvements	1,358,176	1,530,934
Machinery and equipment	3,472,712	3,400,814
	5,077,508	5,234,344
Less: Reserves for depreciation and amortization	2,161,510	1,867,952
	2,915,998	3,366,392
Intangible Assets — at cost:		
Contracts purchased and other intangibles	1,882,552	1,868,872
Excess of investments in consolidated subsidiary companies over underlying book equities at respective acquisition dates	1,532,140	1,589,438
	3,414,692	3,458,310
Less: Reserves for amortization	1,307,334	1,079,913
	2,107,358	2,378,397
Deferred Charges	372,236	469,960
	$10,503,675	$12,833,811

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The accompanying Notes to Financial Statements are an integral

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AND SUBSIDIARY COMPANIES

as at December 31, 1957 and 1956

Liabilities

		1957	1956
Current Liabilities:			
Notes payable — banks — Note C			$1,050,000	$1,200,000
Accounts payable — trade			425,677	1,087,171
Accrued expenses and sundry liabilities			602,064	752,346
Dividends payable — Note G			22,208	31,957
Reserve for Federal income taxes and specific contingencies — Note I			417,007	313,420
Total Current Liabilities			2,516,956	3,384,894
Long Term Debt — Note C:				
Note payable — bank			750,000	950,000
Less: Current portion included above			300,000	200,000
			450,000	750,000
Total Liabilities			2,966,956	4,134,894
Capital Stock and Surplus — Notes F and G:				
	Shares			
Preferred Stock — par value $50.00 per share:				
Authorized	130,000			
Issued and outstanding:				
5% Series A	29,535.9			
3% Series B	10,000			
	39,535.9		1,976,795	1,976,795
Common Stock — par value $1.00 per share:				
Authorized	1,500,000			
Issued and outstanding	1,053,015		1,053,015	1,053,015
Surplus:				
Capital Surplus — no change during 1957			1,079,746	1,079,746
Earned Surplus — per accompanying consolidated statement of income and earned surplus			3,427,163	4,589,361
			7,536,719	8,698,917
General Comments — Notes D, E and I				
			$10,503,675	$12,833,811

part of this statement and should be read in conjunction herewith.

Consolidated Statement of Income and Earned Surplus

for the years ended December 31, 1957 and 1956

	1957	1956
Gross sales, less discounts, returns and allowances	$21,874,031	$19,499,028
Cost of goods sold — Note H	13,375,893	10,536,469
Gross profit	8,498,138	8,962,559
Selling, general and administrative expenses — Note H	7,571,366	8,371,171
Freight out	1,709,912	1,574,357
Amortization of purchased contracts	164,888	140,419
	9,446,166	10,085,947
	(948,028)	(1,123,388)
Other Income: *		
Rental income — net	62,500	21,866
Gain (loss) on sales of fixed assets — net	30,765	(24,297)
Prior years' adjustments — net (arising principally from Internal Revenue Service examinations)	85,246	
Royalties and other items	40,953	25,280
	219,464	22,849
	(728,564)	(1,100,539)
Other Deductions: *		
Amortization of excess of investments in consolidated subsidiary companies over underlying book equities at respective acquisition dates	104,233	40,669
Interest — net	97,075	15,662
Unrealized loss (gain) on conversion of foreign exchange	134,116	(34,476)
Miscellaneous	8,787	11,218
	344,211	33,073
Net (loss) before Federal and foreign income taxes and specific contingencies	(1,072,775)	(1,133,612)
Federal and foreign income taxes and specific contingencies (including, in 1957, Federal income taxes of $175,221 relating to prior years) — net of estimated Federal income taxes refundable under carry-back provisions of the Internal Revenue Code	45,202	(613,000)
Net (loss)	(1,117,977)	(520,612)
Earned Surplus as at the beginning of the period	4,589,361	5,345,799
	3,471,384	4,825,187
Dividends:		
On Preferred Stock — Note G	44,221	29,806
On Common Stock		206,020
	44,221	235,826
Earned Surplus as at the end of the period — per accompanying consolidated balance sheet	$3,427,163	$4,589,361

*1956 figures have been reclassified for comparative purposes.

The accompanying Notes to Financial Statements are an integral part of this statement and should be read in conjunction herewith.

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B T Babbitt, Inc. and subsidiary companies

NOTES

The following notes are applicable to the financial statements as at December 31, 1957, and for the year then ended. The figures as at December 31, 1956, and for the year then ended are included for comparative purposes only, and reference is made to the previously issued report for the notes applicable thereto.

NOTE A — INVENTORIES:

Inventories are stated at the lower of average cost or market. Market represents replacement cost, or selling price less a margin of profit. Inventories consist of the following:

	1957	1956
Raw materials	$1,378,757	$1,861,112
Work in process	215,318	256,926
Finished products	1,145,406	1,833,036
	$2,739,481	$3,951,074

NOTE B — ACCOUNTS RECEIVABLE:

Accounts receivable at December 31, 1957, include $226,591 representing the net proceeds from the sale of a plant, which were collected in January 1958.

NOTE C — BANK LOANS:

A balance of $750,000 owing to a bank (included in Current Liabilities) was reduced in January and February 1958 by payments aggregating $375,000. The loan agreement relating to this debt provides, among other things, that the Company will assign to the bank upon demand, as collateral, all existing and future accounts receivable, as defined therein, of the Company and its wholly-owned domestic subsidiaries and that the Company will maintain accounts receivable at least equal to the unpaid principal amount of the loan.

There was also owing to another bank $750,000 under a loan agreement which, as amended January 9, 1958, provides for repayment of principal, with interest at 6% per annum, as follows: $100,000 on demand (evidenced by a seperate note), $200,000 in quarterly installments of $50,000 each from April 1, 1958 to January 1, 1959, inclusive, and the balance of principal on April 1, 1959. The unpaid balance of the loan may be prepaid at any time without premium. The loan agreement requires the Company to maintain at all times working capital of at least $2,000,000 and restricts, among other things, expenditures for fixed assets and alterations, creation of future mortgage and other indebtedness, and the sale or assignment of assets. The Company has agreed to deliver to the bank upon demand, as collateral: (1) a mortgage on the Company's real property, and (2) title to the Company's inventories.

NOTE D — RETIREMENT PLAN FOR EMPLOYEES:

During the year operations were charged $96,031, the net contribution toward the cost of benefits for 1957 under the Retirement Plan for Employees of B. T. Babbitt, Inc. and associated companies. The plan is terminable by the Company at any time.

NOTE E — EMPLOYEES' PROFIT-SHARING PLAN:

Under the terms of a profit-sharing plan adopted by a wholly-owned subsidiary in 1954 and of the related trust agreement, the subsidiary is obligated to contribute to the trust annually an amount equal to 25% (24% if year-end bonuses are paid) of its annual consolidated net profit (based on a fiscal year ending September 30), as defined in the plan, in excess of 10% of its consolidated net worth as at the beginning of such fiscal year, but such contribution shall not exceed 15% of the aggregate compensation (exclusive of any bonuses) paid during such fiscal year to the plan's participants. The plan has been approved by the Treasury Department.

The plan and related trust agreement are terminable at the option of the subsidiary, retroactive to the beginning of the fiscal year in which the plan is terminated. In the event of such termination, each participant shall be entitled to receive amounts then remaining to his credit.

No provision for contributions to the plan has been made or is necessary for the subsidiary's fiscal year ended September 30, 1957 and for the period from that date to December 31, 1957.

NOTE F — RESTRICTED STOCK OPTIONS:

In accordance with a restricted stock option plan approved by the stockholders of the Company on May 2, 1955, 50,000 shares of the Company's Common Stock are reserved for issuance to not more than 25 salaried officers and key employees at the discretion of the stock option committee of the Board of Directors at a price as defined in the plan. Options under the plan may be granted up to May 31, 1960, but in no event is any option exercisable after May 31, 1965. At December 31, 1956, the number of shares issuable under outstanding options granted under the plan amounted to 7,050 shares and the number of shares available for the granting of options under the plan amounted to 38,900 shares. During the year 1957, options with respect to 3,750 shares became exercisable, options were granted for the purchase of 40,000 shares under the plan, and options held by former employees for the purchase of 5,750 shares expired. Thus, at December 31, 1957, the number of shares issuable under outstanding options granted under the plan amounted to 5,050 shares and the number of shares available for the granting of options under the plan was 4,650.

The foregoing does not include options for the purchase of 30,000 shares granted in 1957 subject to approval by the stockholders during 1958 of proposed amendments to the plan.

On January 6, 1958, options were granted to two officers for the purchase of 25,000 shares subject to approval by the stockholders of proposed amendments to the plan.

There was an expiration during the year of the unexercised portion (3,800 shares) of an option granted to a former officer of the Company in 1953.

No options were exercised during the year ended December 31, 1957.

A summary of options is as follows:

Options Outstanding As At December 31, 1957 and Options Granted in January 1958:

Year Granted	First Exercisable	Shares	Option Price Per Share	Option Price Total	Market Price at Date Granted Per Share	Market Price at Date Granted Total
Options granted under the plan:						
1955	1955-57	4,350	$ 7.24375	$ 31,510	$ 7.625	$ 33,169
1956	1956-58	1,000	5.996875	5,997	6.3125	6,313
1957	1958	20,000	3.859375	77,188	4.0625	81,250
1957	1958-59	20,000	3.44375	68,875	3.625	72,500
Options granted subject to approval by stockholders:						
1957	1960-62	30,000	3.44375	103,313	3.625	108,750
1958	1958-60	25,000	3.325	83,125	3.50	87,500

Options Which Became Exercisable During Year Ended December 31, 1957:

Year Granted	Shares	Option Price Per Share	Option Price Total	Market Price at Date Exercisable Per Share	Market Price at Date Exercisable Total
1955	3,400	$ 7.24375	$ 24,629	$ 4.25	$ 14,450
1956	350	5.996875	2,099	4.375	1,531

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NOTE G — CAPITAL STOCK:

The Board of Directors is authorized to fix from time to time before issuance the designations, preferences, privileges and voting powers of the shares of each series of Preferred Stock, and the restrictions or qualifications thereof.

The Series A Preferred Stock and the Series B Preferred Stock are entitled to cumulative dividends at the rate of 5% and 3%, respectively, of the par value thereof. As at December 31, 1957, there were accumulated dividends in arrears of approximately $37,000 applicable to the Series A Preferred Stock and $7,500 applicable to the Series B Preferred Stock. However, on March 14, 1958, the dividend arrearages and dividends on the Series A and Series B Preferred Stock for the first quarter of 1958 were declared, payable April 1, 1958, by the Board of Directors.

The 5% Series A Preferred Stock and the 3% Series B Preferred Stock are redeemable by the Company at $50 per share plus accrued dividends at any time fixed by resolution of the Board of Directors after August 31, 1959 and prior to September 1, 1961, provided all shares of both series are redeemed at the same time. After August 31, 1961, redemption may be in whole or in part. In the event of dissolution of the Company, the holders of such stock are entitled to receive $50 per share plus accrued dividends.

The 5% Series A Preferred Stock is convertible at anytime into Common Stock of the Company at the basic conversion ratio of five shares of Common Stock for one share of 5% Series A Preferred Stock. The 3% Series B Preferred Stock is convertible before June 30, 1959, into Common Stock of the Company at the basic conversion ratio of 8.2 shares of Common Stock for one share of 3% Series B Preferred Stock. In each case, conversion is subject to prior redemption by the Company and the basic conversion ratio is subject to adjustment as provided in the respective stock certificates. As at December 31, 1957, 229,680 shares of authorized Common Stock were reserved for issuance upon conversion of the Series A and Series B Preferred Stocks.

Beginning May 1, 1965, and annually thereafter, the Company is required to call for redemption, as and for a Sinking Fund, a number of shares of its 5% Series A Preferred Stock and of its 3% Series B Preferred Stock. As to each series and in each case, such number shall be equal to 6% of the greatest number of such shares at any one time outstanding, less the number of shares purchased, redeemed or converted prior thereto but not previously credited to the Sinking Fund.

During the year 2,800 shares of Series A Preferred Stock which had been held in escrow pursuant to the contract relating to the acquisition in 1956 of all of the issued and outstanding capital stock of Connecticut Chemical Research Corporation were released from escrow. However, depending on the outcome of certain contingencies provided for on the books of that subsidiary, such shares, in whole or in part, may be returnable to the Company.

NOTE H — DEPRECIATION:

Depreciation and amortization of fixed assets were charged to operations as follows:

	1957	1956
Cost of goods sold	$281,720	$216,660
Selling, general and administrative expense	108,522	89,220
Other deductions	2,390	1,153
	$392,632	$307,033

B. T. Babbitt, Inc. AND SUBSIDIARY COMPANIES

NOTE 1 — OTHER COMMENTS:

Rents payable under leases expiring after December 31, 1960, amount to approximately $112,500 per annum.

The accompanying consolidated balance sheet includes net assets of a Brazilian subsidiary in the amount of $332,400 (excluding inter-company accounts). Withdrawal of funds from this subsidiary is subject to prevailing monetary regulations of Brazil and the availability of dollar exchange. As at December 31, 1957, the subsidiary is contingently liable in the amount of approximately $94,300 for receivables discounted at banks.

A wholly-owned subsidiary of the Company owns 50% of the voting securities of a Canadian corporation (not consolidated). The subsidiary's right to sell or dispose of these securities is restricted under the terms of an agreement with the other stockholders of the Canadian corporation. No cost has been assigned to this investment on the subsidiary's books and, therefore, such investment is not shown in the accompanying consolidated balance sheet. Unaudited financial statements of this unconsolidated affiliate indicate that the subsidiary's share of the accumulated earnings of the affiliate was approximately $218,000 as at December 31, 1957, which includes its share of undistributed net income of the affiliate for the year then ended of approximately $67,000.

The accompanying consolidated financial statements are subject to final determination of Federal, foreign, state and local taxes.

ACCOUNTANTS' REPORT

To the Board of Directors and Stockholders
B. T. Babbitt, Inc.
New York, N. Y.

We have examined the consolidated balance sheet of B. T. Babbitt, Inc. and subsidiary companies as at December 31, 1957, and the related consolidated statement of income and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The accounts of a wholly-owned foreign subsidiary company were examined by other public accountants and have been included in the accompanying consolidated balance sheet and related consolidated statement of income and earned surplus on the basis of the report of such accountants.

In our opinion, based upon our examination and the report of the aforementioned public accountants, the accompanying consolidated balance sheet and consolidated statement of income and earned surplus, together with the notes to financial statements, present fairly the consolidated financial position of B. T. Babbitt, Inc. and subsidiary companies at December 31, 1957, and the consolidated results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent in all material respects with that of the preceding year.

New York, N. Y.
March 18, 1958

S. D. LEIDESDORF & CO.













PRINCIPAL PRODUCTS OF

The Babbitt Family

Commission's Exhibit No. 535
1956 Annual report of B. T. Babbitt, Inc.

B.T. Babbitt INC.

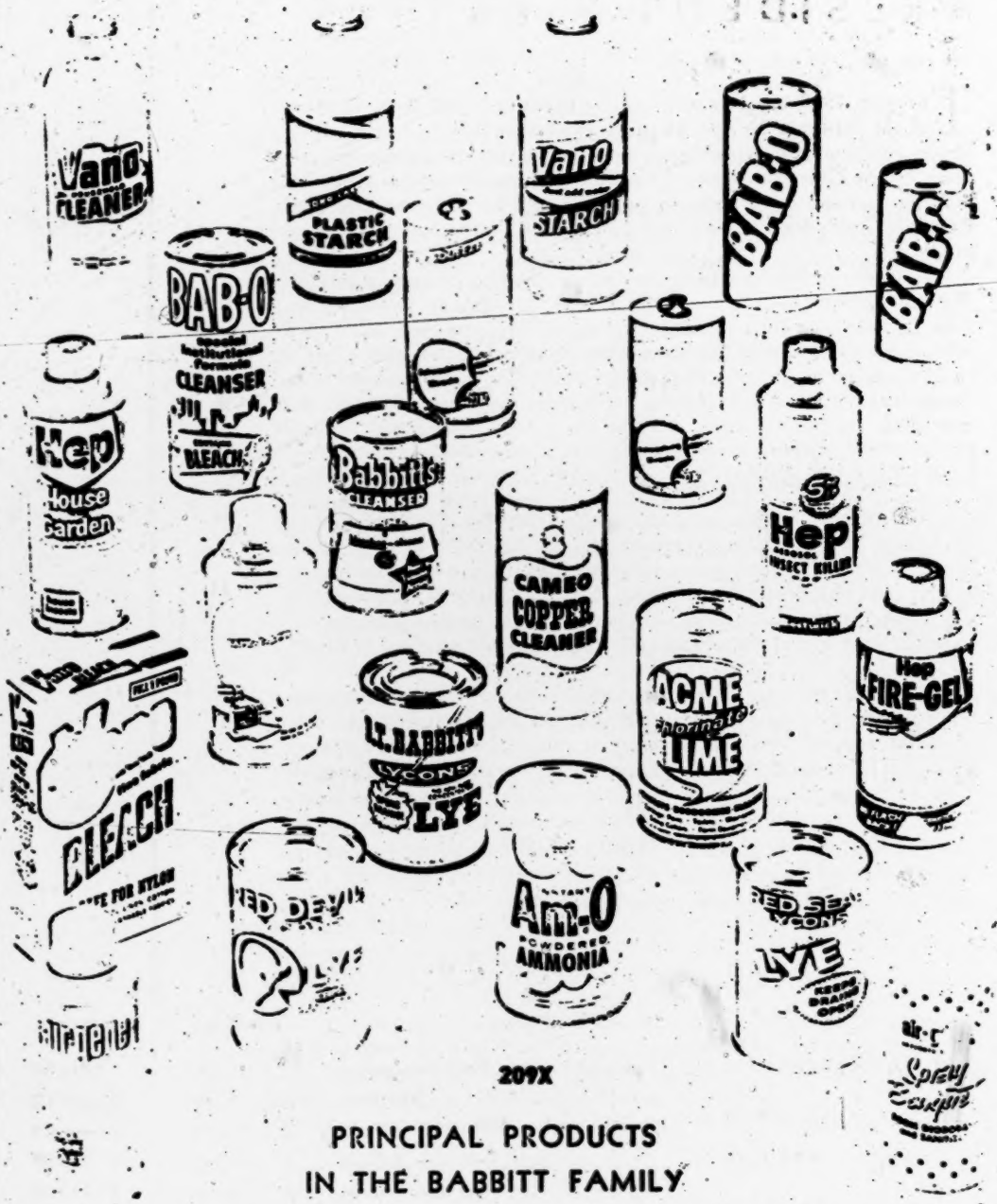


FEDERAL TRADE COMMISSION
DOCKET E.6901 EXHIBIT NO. 535
IN THE MATTER OF
DATE 6/20/57 WITNESS
ACE REPORTING CO., Official Reporters
By

ANNUAL REPORT 1956

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PRINCIPAL PRODUCTS
IN THE BABBITT FAMILY

PRESIDENT'S LETTER

The year 1956 was characterized by expansion and diversification of the business. In line with the expansion program referred to in last year's annual report, your Company made two important acquisitions — Chemicals, Inc. of California, a manufacturer of household starches and other cleaning products, and Connecticut Chemical Research Corporation, a leading manufacturer and packager of aerosol products.

Complex problems arising from these acquisitions and an intensification of competition in the cleanser field combined to produce a decline in the Company's earnings and a net loss from operations. To meet this situation, the Company management has put into effect a comprehensive program, and there is already concrete evidence that the Company's earnings will return to a more satisfactory level in the year 1957.

SALES AND EARNINGS

Net sales of Babbitt products totalled $19,499,028 compared to net sales of $17,160,916 in the preceding year. The 1956 figure includes sales by the acquired companies subsequent to the dates of acquisition, as well as of our Brazilian subsidiary. Net sales in 1956 were the largest in the history of the Company, although the years operations resulted in a net loss of $520,612 in 1956 against a net profit of $532,102 in 1955.

A number of factors contributed to this result. A major factor was the less than anticipated sales along with higher advertising and promotional expenditures due to intensive competition. Higher cost of goods was a contributing cause. Extraordinary expenses in connection with the new acquisitions were also a factor in the results of operations in 1956. Every one of these factors has been taken into account in developing the program to improve results in 1957.

		1956	1955
CONSOLIDATED OPERATING RESULTS	Shares of Common Stock Outstanding	1,053,015	1,025,797
	Net Sales	$19,499,028	$17,160,916
	Net Income (Loss) Before Income Taxes	($ 1,133,612)	$ 1,052,429
	Income Taxes (Net Refund)	($ 613,000)	$ 520,327
	Net Income (Loss)	($ 520,612)	$ 532,102
	Dividends on Preferred Stock	$ 29,806	—
	Common Stock Earnings (Loss) Per Share	($.52)	$.52

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CAPITAL POSITION AND STOCK OWNERSHIP

At the end of 1956 total current assets of the Company were $6,619,062 and total current liabilities were $3,384,894, a ratio of 1.96 to 1. Net working capital amounted to $3,234,168 at the end of 1956 against $3,791,898 at the end of 1955. Cash and securities were 18% of current liabilities as compared with 143% at the end of 1955. Bank loans outstanding at the end of December 1956 were $1,950,000. Stockholders on December 31, 1956 numbered 2659. The number of shares of Common Stock outstanding increased from 1,025,797 to 1,053,015 due to the issuance of 14,898 shares in connection with the acquisition of Chemicals, Inc., the conversion of 464.1 shares of 5% Series A Preferred Stock, and issuance of 10,000 shares as a stock dividend.

ACQUISITIONS

In August 1956 your Company acquired Chemicals, Inc., a California corporation engaged in the business of manufacturing, selling and distributing liquid household starches and other household cleaners. Chemicals, Inc. is the leading manufacturer of household starches on the west coast and confines its operations to the Western states. Several departments of the Chemicals, Inc. operation have been integrated with the Babbitt manufacturing and marketing operation at Vernon, California. The acquisition of Chemicals, Inc. strengthens the operations on the west coast and enables your Company to market a diversified line of household products in that area.

The manufacture and sale of aerosol products is one of the fastest growing industries in America. During the last ten years annual sales of aerosols have increased to over $300,000,000.

After considerable investigation and study of this industry in September, 1956 your Company, through an exchange of stock, acquired the Connecticut Chemical Research Corporation and its subsidiaries, including Bostwick Laboratories, Inc.

The business of the Connecticut Chemical group consists of two distinct operations. The Bostwick Laboratories Division brings to your Company an established sales volume of household aerosol products marketed under its own brand names. The Connecticut Chemical Research Corporation, a leader in the development and manufacture of aerosols, packages for other companies, particularly in the drug and cosmetic fields.

MARKETING

BAB-O

The intensive competitive conditions in the Cleanser industry reached new peaks in 1956. Increased competitive advertising and promotion blunted the excellent progress made by Bab-O during 1955, and 1956 sales fell below the peak achieved in the previous year. Volume, however, exceeded 1954. A continuation of product innovations and

aggressive merchandising put into effect early in 1957 should strengthen Bab-O's position.

Two major product improvements were accomplished during the year 1956; namely, a completely modernized redesign of the Bab-O label provided by Raymond Loewy, the famous industrial designer, which is illustrated on the front cover of this report. In addition, the height and diameter of the can were revised to provide a slimmer, more usable and attractive size to the housewife. By the time this report is published additional improvements will have been announced with the intent of maintaining our position as a leader in product innovation and improvement.

Institutional Bab-O, introduced in the fall of 1954, continues to show remarkable growth and is now one of the leading cleansers in that highly attractive field. This product, limited for sale through Institutional jobbers and janitor supply houses, is now stocked by over 2,000 such accounts across the nation. Sales of bulk Institutional Bab-O in drums as an accompanying item has also recorded major sales growth through the same outlets. Continuing Institutional Advertising through trade publications has materially assisted in the acceptance of this product in these outlets. It is also clear that with Institutional Bab-O as a leader, your Company is finding it possible to cultivate a profitable institutional business on other items, such as aerosol products and drain pipe cleaners.



GLIM

Another marketing first for B. T. Babbitt, Inc. was developed during the spring of 1956 when a revolutionary new plastic "squeeze" type container was test-marketed. This new packaging concept, because of its many consumer advantages, received excellent acceptance and has provided the vehicle to expand Glim into national distribution. Major progress toward that goal was accomplished in 1956 and should be completed during 1957. Glim is now available in most markets in the new plastic container in both the 12-oz. Regular and 22-oz. Economy sizes. A giant 32-oz. King size is also being experimented with in selected markets. The liquid detergent market continues to be one of sensational growth and current research indicates that liquids now consist of 14% of the total packaged detergent sales, and therefore provide a sizable market potential.



AEROSOL PRODUCTS

Your Company is now marketing a broad line of aerosol spray products including Hep insecticides of several types, Hep Oven Cleaner, Hero Fire Extinguisher, Snow for Christmas decoration, and other items. These products are produced at the Bridgeport plant of the Company's new subsidiary, and are marketed by the Bostwick Aerosol Division.

Prior to acquisition by B. T. Babbitt, Inc. these products were distributed mainly through drug, hardware, and housewares stores, with only limited sales in the grocery trade. Through the addition of this aerosol line to the products presently sold on a national scale by the



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Babbitt marketing organization, it is believed that volume can be enlarged substantially in 1957, particularly through grocery store outlets as well as through drug, hardware, and housewares channels. An intensive advertising program is planned in order to establish consumer acceptance of aerosol products.

Two new products have recently been added to the line — Air Gene Aerosol Room Deodorant and Hep Fire-Gel Charcoal Lighter. Early sales results indicate an excellent potential for these items.

VANO

The products of Chemicals, Inc., have been marketed primarily under the Vano label with Vano Liquid Starch, Powdered Bleach, Household Cleaner, and Dura Plastic Starch being the principal items. Vano Liquid Starch, in particular, has been intensively advertised since its introduction in 1946 and is today the leading brand on the West Coast. Your management intends to strengthen this franchise and a program is under way to increase the sale of the other products. The addition of the Vano line to our West Coast operations has already reduced shipping costs, and has provided the base for improved sales and merchandising coverage of the grocery trade in the Western States.

CAMEO COPPER CLEANER

The marketing plans on Cameo Copper Cleaner during 1956 called for a heavy concentration of advertising during the first six months to establish consumer acceptance and an intensified trade promotion during the second half to broaden distribution. The combination of these two moves enabled us to achieve our objectives and, at the close of the year, Cameo was the leader in the copper cleaner market. Advertising included two-color units in leading magazines and Sunday Supplements, supported by larger four-color features in behalf of specific promotions. Highlight of the year's promotional activity was a national $30,000 consumer contest which attracted entrants from all parts of the country.

LYE

Sales of Lye during 1956 reversed a long term declining sales trend and enjoyed an increase over 1955 volume. Modernized labels, improved distribution in metropolitan areas, an advertising program in farm journals, and a continuing consumer premium program contributed to the increase. Your Company will continue its efforts to improve its position in the lye market.

AM-O

Am-O, our concept of a modern household ammonia, was placed in national distribution during 1956 after long study in a three-state test area. Am-O is the only instant powdered ammonia on the market today and has many trade and consumer advantages over the liquid product. Initial acceptance by the distributing trade has been excellent but our experience in the test areas indicated that the ammonia market is not large enough to warrant major advertising support. Consequently long range plans call for a variety of promotions designed to build gradually a profitable franchise for this product.

Commission's Exhibit No. 538A-C
Television spot announcements, Clorox Chemical and Clorox Co. 1956-1958

April 23, 1958 TELEVISION SPOT ANNOUNCEMENTS Page 1

City	TV Station	Clorox Chemical Co. July 22, 1956 to Dec. 31, 1956			Clorox Chemical Co. Jan. 1, 1957 to July 31, 1957			The Clorox Company Aug. 1, 1957 to Mar. 31, 1958		
		20-sec.	Min.	Total	20-sec.	Min.	Total	20-sec.	Min.	Total
Abilene, Tex.	KRBC-TV	--	--	--	--	--	--	--	134	134
Albuquerque, N. Mex.	KOB-TV	--	--	--	--	21	21	--	208	208
Amarillo, Tex.	KFDA-TV	--	--	--	--	--	--	--	58	58
	KGNC-TV	--	--	--	--	--	--	--	76	76
Asheville, N. Car.	WLOS-TV	--	--	--	--	22	22	--	207	207
Atlanta, Ga.	WAGA-TV	13	--	13	55	83	138	69	104	173
	WSB -TV	51	34	85	--	--	--	--	--	--
Austin, Tex.	KTBC-TV	--	--	--	--	--	--	--	135	135
Baltimore, Md.	WBAL-TV	51	34	85	77	61	138	155	44	199
	WMAR-TV	85	--	85	139	--	139	173	--	173
Beaumont, Tex.	KFDM-TV	--	--	--	--	--	--	--		135
Bellingham, Wash.	KVOS-TV	--	148	148	10	100	110	--	61	61
Birmingham, Ala.	WAPI-TV	--	--	--	20	10	30	265	151	416
	WBRC-TV	170	--	170	125	125	250	--	--	--
Boston, Mass.	WNAC-TV	168	--	168	138	138	276	188	157	345
Buffalo, N. Y.	WGR -TV	46	51	97	--	142	142	--	208	208
Charleston, S. C.	WCSC-TV	--	--	--	7	14	21	70	139	209
Charlotte, N. C.	WBTV-TV	101	--	101	83	82	165	103	105	208
Chattanooga, Tenn.	WRGP-TV	--	--	--	--	--	--	1	1	2
Chicago, Ill.	WBBM-TV	--	--	--	96	65	161	--	--	--
	WNBQ-TV	153	85	238	145	117	262	346	277	623
Cincinnati, Ohio	WKRC-TV	--	--	--	56	82	138	42	65	107
	WLWT-TV	100	--	100	--	--	--	51	25	76
Cleveland, Ohio	KYW -TV	74	56	130	109	95	204	315	271	586
	WEWS-TV	--	20	20	--	--	--	--	--	--
	WJW -TV	7	--	7	70	70	140	--	--	--
Columbia, S. C.	WIS -TV	82	33	115	11	11	22	103	102	205
Columbus, Ohio	WBNS-TV	64	--	64	10	5	15	--	--	--
	WLWC-TV	--	--	--	135	69	204	168	105	273
Corpus Christi, Tex.	KZTS-TV	--	--	--	--	--	--	--	135	135
Dallas, Tex.	WFAA-TV	--	--	--	11	10	21	--	295	295
Davenport, Ia.	WHBF-TV	--	--	--	248	83	331	312	104	416
Denver, Colo.	KLZ -TV	70	29	99	--	--	--	--	--	--
	KOA -TV	--	--	--	111	55	166	112	95	207
Des Moines, Ia.	KRNT-TV	64	34	98	56	83	139	69	104	173
Detroit, Mich.	WJBK-TV	55	51	106	--	--	--	67	67	134
	WWJ -TV	22	--	22	84	82	166	36	38	74
El Paso, Tex.	KROD-TV	--	--	--	--	--	--	--	58	58
	KTSM-TV	--	--	--	--	37	37	--	232	232

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CX 538(b)

April 23, 1958

TELEVISION SPOT ANNOUNCEMENTS

City	TV Station	Clorox Chemical Co. July 22, 1956 to Dec. 31, 1956			Clorox Chemical Co. Jan. 1, 1957 to July 31, 1957			The Clorox Company Aug. 1, 1957 to Mar. 31, 1958		
		20-sec.	Min.	Total	20-sec.	Min.	Total	20-sec.	Min.	Total
Erie, Penn.	WICU-TV	--	--	--	--	--	--	--	226	226
Evansville, Ind.	WFIE-TV	--	--	--	--	--	--	--	216	216
Ft. Worth, Tex.	WBAP-TV	--	--	--	--	--	--	--	58	58
Galveston, Tex.	KGUL-TV	84	--	84	111	55	166	61	108	169
Greenville, S.C.	WFBC-TV	--	--	--	6	12	18	70	103	173
Harlingen, Tex.	KGBT-TV	--	--	--	--	--	--	--	46	46
Houston, Tex.	KPRC-TV	30	72	102	110	55	165	146	101	247
Huntington, W. Va.	WSAZ-TV	51	13	64	--	--	--	--	--	--
Indianapolis, Ind.	WISH-TV	47	34	81	27	137	164	35	173	208
Jackson, Miss.	WLBT-TV	81	4	85	--	118	118	--	173	173
	WJTV-TV	--	--	--	--	20	20	--	--	--
Jacksonville, Fla.	WMBR-TV	--	101	101	84	81	165	104	104	208
Kansas City, Mo.	KCMO-TV	97	69	166	161	114	275	186	162	348
	WDAF-TV	75	--	75	138	--	138	173	--	173
Los Angeles, Cal.	KNXT-TV	158	26	184	249	82	331	156	53	209
	KRCA-TV	--	--	--	--	--	--	162	127	289
	KTTV-TV	--	--	--	--	--	--	--	8	8
Little Rock, Ark.	KARK-TV	141	14	155	--	--	--	--	--	--
Louisville, Ky.	WAVE-TV	34	34	68	--	125	125	56	250	306
	WHAS-TV	15	--	15	--	--	--	--	--	--
Lubbock, Tex.	KCBD-TV	--	--	--	--	275	275	--	347	347
Memphis, Tenn.	WMCT-TV	30	55	85	55	83	138	69	104	173
Miami, Fla.	WCKT-TV	--	--	--	--	--	--	33	33	66
	WTVJ-TV	33	17	50	55	55	110	47	72	119
Midland, Tex.	KMID-TV	--	--	--	--	--	--	--	77	77
Milwaukee, Wisc.	WTMJ-TV	--	--	--	--	--	--	121	90	211
New Orleans, La.	WDSU-TV	47	34	81	82	55	137	104	69	173
New York, N. Y.	WCBS-TV	--	--	--	27	9	36	--	--	--
	WNBC-TV	187	68	255	222	123	345	320	174	494
Norfolk, Va.	WTAR-TV	85	--	85	138	--	138	173	--	173
Odessa, Tex.	KOSA-TV	--	--	--	--	--	--	--	58	58
Oklahoma City, Okla.	KTVY-TV	36	12	48	--	--	--	--	--	--
	WKY -TV	104	26	130	135	141	276	39	307	346
Omaha, Nebr.	WOW -TV	64	--	64	27	56	83	92	12	104
Peoria, Ill.	WEEK-TV	64	34	98	55	82	137	69	104	173
	WTVH-TV	13	--	13	--	--	--	--	--	--
Philadelphia, Pa.	WCAU-TV	--	--	--	276	55	331	346	69	415
	WRCV-TV	148	55	203	--	--	--	--	--	--
Phoenix, Ariz.	KOOL-TV	--	--	--	11	11	22	104	104	208
Pittsburgh, Pa.	KDKA-TV	82	54	136	55	82	137	70	104	174
Portland, Ore.	KOIN-TV	153	--	153	138	69	207	--	--	--
	KPTV-TV	--	--	--	70	28	98	502	137	639

CX538(L)

April 23, 1958 TELEVISION SPOT ANNOUNCEMENTS

City	TV Station	Clorox Chemical Co. July 22, 1956 to Dec. 31, 1956			Clorox Chemical Co. Jan. 1, 1957 to July 31, 1957			The Clorox Company Aug. 1, 1957 to Mar. 31, 1958		
		20-sec.	Min.	Total	20-sec.	Min.	Total	20-sec.	Min.	Total
Raleigh, N. C.	WRAL-TV	--	--	--	--	138	138	--	172	172
	WTVD-TV	85	--	85	--	--	--	--	--	--
Roanoke, Va.	WSLS-TV	--	--	--	10	11	21	104	104	208
Rochester, N.Y.	WROC-TV	--	--	--	83	146	229	104	242	346
St. Louis, Mo.	KSD -TV	140	--	140	58	59	117	105	104	209
	KTK -TV	13	--	13	16	24	40	--	--	--
Salt Lake City, Utah	KSL -TV	98	47	145	112	83	195	73	45	120
	KUTV-TV	--	--	--	--	--	--	121	--	121
San Angelo, Tex.	KSEV-TV	--	--	--	--	--	--	--	134	134
San Antonio, Tex.	WOAI-TV	--	--	--	7	16	23	31	233	264
San Francisco, Cal.	KGO -TV	2	--	2	--	--	--	--	--	--
	KPIX-TV	--	--	--	194	138	332	217	198	415
	KRON-TV	87	119	206	--	--	--	--	--	--
Schenectady, N.Y.	WRGB-TV	--	--	--	19	3	22	195	13	207
Scranton, Pa.	WDAU-TV	--	--	--	11	10	21	104	104	208
Seattle, Wash.	KING-TV	--	26	26	--	--	--	--	--	--
	KOMO-TV	85	--	85	138	138	276	170	173	343
Shreveport, La.	KSLA-TV	--	--	--	11	10	21	103	105	208
Spokane, Wash.	KHQ -TV	--	--	--	--	--	--	--	70	70
	KREM-TV	9	65	74	--	138	138	--	57	57
	KXLY-TV	26	63	89	--	--	--	--	--	--
Syracuse, N. Y.	WHEN-TV	--	--	--	192	138	330	240	173	413
	WSYR-TV	119	85	204	--	--	--	--	--	--
Tacoma, Wash.	KTNT-TV	34	51	85	--	--	--	--	--	--
Tampa, Fla.	WFLA-TV	--	--	--	109	56	165	139	69	208
	WTVT-TV	64	51	115	--	--	--	--	--	--
Temple, Tex.	KTEM-TV	--	--	--	--	--	--	--	62	62
Tucson, Ariz.	KVOA-TV	--	--	--	--	18	18	--	173	173
Tulsa, Okla.	KVOO-TV	--	--	--	7	13	20	43	167	210
Waco, Tex.	KWTX-TV	--	--	--	--	--	--	--	76	76
Washington, D.C.	WRC -TV	--	--	--	78	40	118	139	68	207
	WTOP-TV	87	34	101	32	16	48	--	--	--
Wheeling, W. Va.	WTRF-TV	--	--	--	--	--	--	--	134	134
Wichita, Kans.	KAKE-TV	--	--	--	--	--	--	--	64	64
	KARD-TV	--	--	--	82	83	165	58	101	159
	KTVH-TV	53	32	85	--	--	--	--	--	--
Wichita Falls, Tex	KFDX-TV	--	--	--	--	--	--	--	76	76
	KSYD-TV	--	--	--	--	--	--	--	58	58
Wilmington, N.C.	WMFD-TV	98	--	98	--	--	--	--	--	--
Youngstown, Ohio	WFMJ-TV	--	--	--	--	--	--	--	134	134

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Commission's Exhibit No. 571A-D
Nielsen Trend Table 4 and 5—abrasive cleansers

	TOTAL ABRASIVE CLEANSERS	COMET			AJAX	
1955-56		REGULAR	GIANT	TOTAL	REGULAR	GIANT
DEC-JAN	$7672 100%				$2940 38.3%	$1306 17.0%
FEB-MAR	7582 100				2950 38.9	1173 15.5
APR-MAY	7534 100				2860 38.0	1149 15.3
JUN-JUL	7734 100				3062 39.6	1243 16.1
AUG-SEP	8143 100	$ 20 0.2%	$ 7 0.1%	$ 27 0.3%	3213 39.5	1319 16.2
OCT-NOV	8238 100	110 1.3	51 0.6	161 1.9	3076 37.3	1331 16.1
1956-57						
DEC-JAN	$8223 100%	$795 9.7%	$309 3.7%	$1105 13.4%	$2672 32.5%	$1278 15.6%
FEB-MAR	8439 100	1486 17.6	526 6.2	2012 23.8	2408 28.6	1203 14.2
APR-MAY	8865 100	1680 18.9	586 6.6	2266 25.5	2502 28.2	1176 13.3
JUN-JUL	8780 100	1630 18.6	705 8.0	2335 26.6	2344 26.7	1265 14.4
AUG-SEP	9486 100	1844 19.4	915 9.7	2759 29.1	2567 27.0	1284 13.6
OCT-NOV	9392 100	1984 21.1	1034 11.0	3018 32.1	2499 26.6	1166 12.4
1957-58						
DEC-JAN	$9175 100%	$1988 21.7%	$1162 12.6%	$3150 34.3%	$2203 24.0%	$1235 13.5%
FEB-MAR	9294 100	2215 23.8	1178 12.7	3393 36.5	2267 24.4	1164 12.5

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 COMMISSION EXHIBIT NO. 571A
IN THE MATTER OF The Procter & Gamble Co.
DATE 9/13/58 WITNESS Smith
ACE REPORTING CO., Official Reporters
By [redacted] P. Stanberg

Comm Ex 571A

TREND TABLE 4

ABRASIVE CLEANSERS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

AJAX			BAB-O			BLUE DUTCH			CAMEO			
REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	WITH BLEACH	OLD STYLE	TOTAL	ALL OTHERS
$2940 38.3%	$1306 17.0%	$4246 55.3%	$1313 17.1%	$641 8.4%	$1594 25.5%	$624 8.1%	$ 34 0.5%	$658 8.6%				$814 10.6%
2950 38.9	1173 15.5	4123 54.4	1292 17.1	655 8.6	1947 25.7	631 8.3	60 0.8	691 9.1				821 10.8
2880 38.0	1149 15.3	4009 53.3	1288 17.1	648 8.6	1936 25.7	669 8.9	104 1.4	773 10.3				806 10.7
3062 39.6	1243 16.1	4305 55.7	1293 16.7	573 7.4	1866 24.1	654 8.5	120 1.5	774 10.0				789 10.2
3213 39.5	1319 16.2	4532 55.7	1302 16.0	590 7.2	1892 23.2	780 9.6	130 1.6	910 11.2				782 9.6
3076 37.3	1331 16.1	4407 53.4	1325 16.1	552 6.7	1877 22.8	872 10.6	117 1.4	989 12.0	NOT SEGREGATED			804 9.8
$2672 32.5%	$1278 15.6%	$3950 48.1%	$1135 13.8%	$458 5.5%	$1593 19.3%	$747 9.1%	$144 1.8%	$891 10.9%	$ 19 0.2%	$ 18 0.2%	$ 37 0.4%	$848 7.9%
2408 28.6	1203 14.2	3611 42.8	1029 12.2	440 5.2	1469 17.4	593 7.1	115 1.3	708 8.4	17 0.2	12 0.2	29 0.4	810 7.2
2502 28.2	1176 13.3	3678 41.5	1100 12.4	496 5.6	1596 18.0	517 5.8	119 1.4	636 7.2	15 0.2	11 0.1	26 0.3	668 7.5
2344 26.7	1265 14.4	3609 41.1	1071 12.2	475 5.4	1546 17.6	491 5.6	111 1.3	602 6.9	9 0.1	11 0.1	20 0.2	668 7.6
2567 27.0	1284 13.6	3851 40.6	1060 11.2	435 4.5	1495 15.7	483 5.1	166 1.8	649 6.9		NOT SEGREGATED		732 7.7
2499 26.6	1166 12.4	3665 39.0	975 10.4	434 4.6	1409 15.0	417 4.5	162 1.7	579 6.2				721 7.7
$2203 24.0%	$1235 13.5%	$3438 37.5%	$ 914 10.0%	$444 4.8%	$1358 14.8%	$387 4.2%	$140 1.5%	$527 5.7%				$702 7.7%
2267 24.4	1164 12.5	3431 36.9	875 9.4	392 4.2	1267 13.6	401 4.4	147 1.5	548 5.9				658 7.1

TREND TABLE 5

ABRASIVE CLEANSERS

CONSUMER SALES - BY ITEM

REGULAR PACKAGE SIZE EQUIVALENT BASIS (000)

1985-86	TOTAL ABRASIVE CLEANSERS	COMET			AJAX			BAB-O		
		REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOT
DEC-JAN	64844 100%				22932 35.3%	12311 19.0%	35243 54.3%	10209 15.7%	5948 9.2%	16157
FEB-MAR	65373 100				24857 38.0	10533 16.1	35390 54.1	10014 15.3	6125 9.4	16139
APR-MAY	65018 100				24043 37.0	9931 15.3	33974 52.3	10133 15.5	6535 10.1	16668
JUN-JUL	65411 100				24733 37.8	10775 16.5	35508 54.3	10124 15.5	5328 8.2	15452
AUG-SEP	67436 100	147 0.2%	48 0.1%	195 0.3%	25148 37.3	11178 16.6	36326 53.9	10077 14.9	5201 7.7	15278
OCT-NOV	68819 100	748 1.1	356 0.5	1104 1.6	23653 34.4	11240 16.3	34893 50.7	11202 16.3	4727 6.9	15929
1986-87										
DEC-JAN	67662 100%	5417 8.0%	2169 3.2%	7586 11.2%	20514 30.3%	11254 16.7%	31768 47.0%	9835 14.5%	3893 5.8%	13728
FEB-MAR	67985 100	10156 15.1	3648 5.4	13804 20.5	19018 28.2	10807 16.0	29825 44.2	8148 12.1	3520 5.3	11668
APR-MAY	70974 100	11874 16.7	4086 5.8	15960 22.5	20257 28.5	10285 14.5	30542 43.0	8846 12.5	4298 6.0	13144
JUN-JUL	70777 100	11572 16.4	5194 7.3	16766 23.7	18643 26.3	11515 16.3	30158 42.6	8974 12.7	4193 5.9	13167
AUG-SEP	74708 100	12854 16.7	6885 9.2	19339 25.9	20274 27.1	11290 15.1	31564 42.2	8893 11.9	3524 4.7	12417
OCT-NOV	73887 100	13117 17.8	7651 10.4	20768 28.2	20634 28.1	10072 13.7	30706 41.8	7905 10.8	3487 4.7	11392
1987-88										
DEC-JAN	71910 100%	13184 18.4%	8845 12.4%	22029 30.8%	17316 24.2%	11195 15.7%	28511 39.9%	7292 10.2%	3697 5.2%	10989
FEB-MAR	67588 100	14590 21.6	8492 12.6	23082 34.2	16606 24.6	8887 13.1	25493 37.7	6439 9.5	2997 4.4	9436

Comm Ex 571 B

FEDERAL TRADE COMMISSION
DOCKET NO. 6101 COMMISSION EXHIBIT NO. 571 B

TREND TABLE 5

ABRASIVE CLEANSERS

CONSUMER SALES - BY ITEM

REGULAR PACKAGE SIZE EQUIVALENT BASIS
(000)

AJAX			BAB-O			BLUE DUTCH			CAMEO			
REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	WITH BLEACH	OLD STYLE	TOTAL	ALL OTHERS
32 35.3%	12311 19.0%	35243 54.3%	10209 15.7%	5948 9.2%	16157 24.9%	5901 9.1%	357 0.6%	6258 9.7%				7186 11.1%
57 38.0	10533 16.1	35390 54.1	10014 15.3	6125 9.4	16139 24.7	5965 9.1	637 1.0	6602 10.1				7242 11.1
43 37.0	9931 15.3	33974 52.3	10133 15.5	6535 10.1	16668 25.6	6361 9.8	1090 1.7	7451 11.5				6925 10.6
33 37.8	10775 16.5	35508 54.3	10124 15.5	5328 8.2	15452 23.7	6358 9.7	1325 2.0	7683 11.7				6768 10.3
48 37.3	11178 16.6	36326 53.9	10077 14.9	5201 7.7	15278 22.6	7500 11.1	1385 2.1	8885 13.2				6752 10.0
53 34.4	11240 16.3	34893 50.7	11202 16.3	4727 6.9	15929 23.2	8581 12.4	1296 1.9	9877 14.3	NOT SEGREGATED			7016 10.2
14 30.3%	11254 16.7%	31768 47.0%	9835 14.5%	3893 5.8%	13728 20.3%	7288 10.7%	1498 2.2%	8786 12.9%	128 0.2%	134 0.2%	262 0.4%	5832 8.2%
8 28.2	10807 16.0	29825 44.2	8148 12.1	3520 5.3	11668 17.4	5566 8.2	1196 1.8	6762 10.0	112 0.2	91 0.1	203 0.3	5123 7.6
7 28.5	10285 14.5	30542 43.0	8846 12.5	4298 6.0	13144 18.5	4595 6.5	1247 1.8	5842 8.3	101 0.1	78 0.1	179 0.2	5307 7.5
3 26.3	11515 16.3	30158 42.6	8974 12.7	4193 5.9	13167 18.6	4338 6.1	1127 1.6	5465 7.7	61 0.1	82 0.1	143 0.2	5078 7.2
4 27.1	11290 15.1	31564 42.2	8893 11.9	3524 4.7	12417 16.6	4212 5.7	1671 2.2	5883 7.9	NOT SEGREGATED			5505 7.4
4 28.1	10072 13.7	30700 41.8	7905 10.8	3487 4.7	11392 15.5	3637 4.9	1620 2.2	5257 7.1				5434 7.4
6 24.2%	11195 15.7%	28511 39.9%	7292 10.2%	3697 5.2%	10989 15.4%	3337 4.6%	1422 2.0%	4759 6.6%				5222 7.3%
06 24.6	8887 13.1	25493 37.7	6439 9.5	2997 4.4	9436 13.9	3307 4.9	1402 2.1	4709 7.0				4868 7.2

Comm Ex 571 C 61

FEDERAL TRADE COMMISSION
DOCKET NO. 6701 COMMISSION EXHIBIT NO. 571 C

TABLE 4

ABRASIVE CLEANSERS - '61

CONSUMER SALES - BY ITEM
DOLLAR BASIS AT COST PRICE TO CONSUMER
FEBRUARY-MARCH 1958

	TOTAL ABRASIVE CLEANSERS	COMET			AJAX			BAB-O			BLUE DUTCH			ALL-OTHER
		REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	
TOTAL UNITED STATES	9,294,377 100.0	2,214,570 23.8	1,178,538 12.7	3,393,108 36.5	2,266,850 24.4	1,163,996 12.5	3,430,746 36.9	874,628 9.4	392,031 4.2	1,266,659 13.6	400,920 4.4	147,635 1.5	548,555 5.9	655,309 7.1
BY TERRITORIES														
NEW ENGLAND	583,021	125,817	44,056	169,873	140,110	70,993	211,103	80,360	28,381	109,741	39,866	10,747	50,613	42,691
METRO NEW YORK	1,258,689	235,428	140,736	376,164	404,117	178,690	582,807	111,524	57,876	169,400	17,660	5,404	23,064	107,234
MIDDLE ATLANTIC	1,178,649	291,034	145,757	436,791	304,694	171,322	476,016	109,735	36,552	146,287	38,561	7,511	46,072	71,483
EAST CENTRAL	1,518,582	404,643	232,542	637,185	351,885	188,192	540,077	122,849	63,029	185,878	79,980	19,844	99,824	55,618
METRO CHICAGO	500,926	126,636	86,917	213,553	88,845	44,118	132,963	41,013	20,278	61,291	12,858	95	12,953	60,156
WEST CENTRAL	1,085,682	305,160	150,910	457,070	223,753	116,375	340,128	103,379	46,707	150,086	47,878	18,017	65,895	72,513
SOUTHEAST	1,005,674	254,570	90,987	345,557	295,958	98,019	393,987	111,300	42,073	153,373	63,770	17,624	81,394	31,413
SOUTHWEST	766,657	180,080	99,295	279,375	156,773	107,462	264,235	101,609	54,410	156,019	27,721	12,097	39,818	27,210
PACIFIC	1,396,807	290,202	187,388	477,590	300,705	188,725	489,430	92,859	42,725	135,584	72,618	56,296	128,912	166,991
BY COUNTY SIZES														
CLASS A- METRO N. Y. AND CHGO.	1,759,595	362,064	227,653	589,717	492,962	222,808	715,770	152,337	78,154	230,491	30,528	5,499	36,027	187,390
REMAINING A	2,851,701	625,788	353,794	979,582	637,767	373,419	1,011,186	211,506	96,930	308,436	114,523	57,606	172,129	180,398
CLASS B	2,988,788	617,781	291,165	908,946	611,871	331,350	943,221	274,465	119,007	393,472	136,421	51,140	187,561	160,586
CLASS C	1,443,782	381,829	195,206	577,035	327,898	136,666	464,564	147,434	58,603	206,037	74,385	22,382	96,768	79,348
CLASS D	849,593	227,138	110,720	337,858	196,352	79,653	276,005	88,886	39,337	128,023	45,062	11,008	56,070	47,807
BY STORE TYPES														
CHAINS	4,909,698	1,149,571	696,329	1,845,900	1,067,457	698,495	1,765,952	469,690	232,476	702,166	193,254	80,694	273,948	341,732
INDEPENDENTS	4,384,679	1,064,999	482,209	1,547,208	1,219,393	465,401	1,684,794	434,938	159,555	594,493	207,666	66,941	274,607	313,577
BY STORE SIZES -INDEPENDENT STORES ONLY-														
SUPER LARGE - OVER $500 M	1,355,478	338,323	221,845	560,168	337,080	195,838	532,918	132,374	73,577	205,951	76,017	35,739	111,776	124,888
LARGE -$100 M TO $500 M	1,360,288	319,214	157,168	476,382	354,354	155,381	509,735	141,760	41,214	182,974	69,437	24,494	93,931	97,046
MEDIUM -$50 M TO $100 M	780,016	201,097	63,108	264,205	248,701	66,721	314,422	73,265	16,297	89,562	31,354	3,003	34,357	47,472
SMALL -UNDER $50 M	718,917	185,365	40,090	226,455	279,258	48,281	327,519	77,539	8,467	86,006	30,858	3,885	34,543	44,384

Comm Exh 716

FEDERAL TRADE COMMISSION
DOCKET NO. 6701 COMMISSION EXHIBIT NO. 571D

TABLE 5

ABRASIVE CLEANSERS - NFI

CONSUMER SALES - BY ITEM
REGULAR PACKAGE SIZE EQUIVALENT BASIS
FEBRUARY-MARCH 1958

	TOTAL ABRASIVE CLEANSERS	COMET			AJAX			BAR-O			BLUE DUTCH			ALL-OTHER
		REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	REGULAR	GIANT	TOTAL	
TOTAL UNITED STATES	67,588,089	14,589,600	8,492,347	23,081,947	16,606,300	8,886,750	25,493,050	6,438,800	2,997,000	9,435,800	3,307,400	1,401,672	4,709,072	4,868,200
	100.0	21.6	12.6	34.2	24.6	13.1	37.7	9.5	4.4	13.9	4.9	2.1	7.0	7.2
BY TERRITORIES														
NEW ENGLAND	4,273,205	848,000	320,811	1,168,811	1,043,300	526,350	1,569,650	572,600	213,900	786,500	332,900	110,944	443,844	304,400
	100.0	19.8	7.5	27.4	24.4	12.3	36.7	13.4	5.0	18.4	7.9	2.6	10.4	7.1
METRO NEW YORK	9,276,226	1,590,600	1,015,261	2,605,861	2,878,200	1,776,400	4,352,600	843,800	437,880	1,281,680	153,800	54,215	208,015	828,100
	100.0	17.1	11.0	28.1	32.1	14.8	46.9	9.1	4.7	13.8	P.7	0.6	2.3	8.9
MIDDLE ATLANTIC	8,815,473	1,953,100	1,089,932	3,033,032	2,252,600	1,292,400	3,545,000	824,600	278,700	1,103,300	318,500	70,241	388,741	545,400
	100.0	22.8	12.4	35.2	28.2	15.0	41.2	9.5	3.3	/12.8	3.7	0.8	4.5	6.3
EAST CENTRAL	10,967,991	2,641,300	1,663,485	4,304,785	2,569,000	1,459,800	4,028,800	908,100	465,450	1,373,580	664,900	192,656	857,556	383,300
	100.0	24.1	15.2	39.3	23.5	13.3	36.8	8.3	4.3	12.6	6.0	1.8	7.8	3.5
METRO CHICAGO	3,708,889	867,000	605,496	1,472,496	667,100	347,850	1,014,950	272,800	145,200	418,000	108,800	943	107,743	693,700
	100.0	22.8	16.9	39.7	18.0	9.4	27.4	7.4	3.9	11.3	2.9	-	2.9	18.7
WEST CENTRAL	7,890,668	2,003,200	1,084,674	3,087,574	1,843,500	918,600	2,562,100	760,600	350,580	1,111,150	409,800	172,544	582,344	547,200
	100.0	25.4	13.7	39.1	20.9	11.6	32.5	9.6	4.5	14.1	5.2	2.2	7.4	6.9
SOUTHEAST	7,284,928	1,677,600	657,593	2,335,193	2,142,900	751,650	2,894,550	813,600	341,700	1,155,300	522,700	169,085	691,785	208,100
	100.0	23.0	9.1	32.1	29.4	10.3	39.7	11.2	4.6	15.8	7.2	2.3	9.5	2.9
SOUTHWEST	5,636,633	1,176,900	734,689	1,911,589	1,151,900	824,550	1,976,050	778,400	441,750	1,220,150	221,200	108,544	329,744	199,100
	100.0	20.9	13.0	33.9	20.4	14.7	35.1	13.8	7.8	21.6	3.9	2.0	5.9	3.5
PACIFIC	9,656,056	1,841,900	1,320,408	3,162,308	2,160,200	1,389,150	3,549,350	684,300	321,900	986,200	578,800	522,500	1,099,300	1,158,900
	100.0	18.5	13.3	31.8	21.7	13.9	35.6	6.7	3.2	9.9	5.8	5.3	11.1	11.6
BY COUNTY SIZES														
CLASS A- METRO N. Y. AND CHGO.	12,983,115	2,437,600	1,640,757	4,078,357	3,643,300	1,724,250	5,367,550	1,118,600	583,080	1,699,680	280,600	58,158	315,758	1,521,600
	100.0	18.8	12.6	31.4	28.1	13.3	41.4	8.6	4.4	13.0	2.1	0.4	2.5	11.7
REMAINING A	19,317,216	4,132,100	2,544,986	6,677,086	4,704,000	2,827,050	7,531,050	1,581,700	736,650	2,288,350	942,800	548,230	1,491,030	1,329,700
	100.0	21.4	13.2	34.6	24.3	14.7	39.0	8.0	3.8	11.8	4.9	2.8	7.7	6.9
CLASS B	18,869,810	4,077,100	2,105,618	6,182,718	4,459,000	2,510,250	6,969,250	2,042,000	919,800	2,961,800	1,125,100	483,842	1,608,942	1,126,300
	100.0	21.6	11.2	32.8	23.7	13.3	37.0	10.8	4.9	15.7	6.0	2.5	8.5	6.0
CLASS C	10,438,321	2,497,100	1,403,643	3,900,743	2,394,100	1,210,350	3,604,450	1,075,700	458,100	1,533,800	610,800	214,028	824,828	564,300
	100.0	23.9	13.5	37.4	23.0	11.6	34.6	10.3	4.4	14.7	5.8	2.1	7.9	5.4
CLASS D	6,610,407	1,445,700	787,343	2,243,043	1,405,900	614,850	2,020,750	692,800	299,400	992,200	368,100	100,414	468,514	325,900
	100.0	24.1	13.2	37.3	23.4	10.2	33.6	10.9	5.0	15.9	6.1	1.7	7.8	5.4
BY STORE TYPES														
CHAINS	38,086,885	7,742,400	5,008,884	12,751,284	7,787,400	5,188,500	12,975,900	3,319,100	1,919,100	5,238,200	1,626,500	795,571	2,422,071	2,679,400
	100.0	21.5	13.9	35.4	21.5	14.4	35.9	9.2	5.4	14.6	4.5	2.2	6.7	7.4
INDEPENDENTS	31,521,214	6,847,200	3,483,463	10,330,663	8,818,900	3,698,250	12,517,150	3,119,700	1,077,900	4,197,600	1,680,900	606,101	2,287,001	2,189,800
	100.0	21.7	11.1	32.8	28.0	11.7	39.7	9.9	3.4	13.3	5.3	2.0	7.3	6.9
BY STORE SIZES -INDEPENDENT STORES ONLY-														
SUPER LARGE - OVER $300 M	11,443,748	2,377,400	1,627,706	4,005,106	2,510,200	1,527,300	4,037,500	990,400	582,600	1,573,000	626,700	323,242	949,942	878,200
	100.0	20.8	14.2	35.0	21.9	13.4	35.3	8.6	5.1	13.7	5.5	2.8	8.3	7.7
LARGE -$100 M TO $300 M	9,796,380	2,048,100	1,117,387	3,165,487	2,570,300	1,249,800	3,820,100	1,039,100	307,080	1,346,150	589,000	223,143	782,143	672,300
	100.0	20.9	11.4	32.3	26.3	12.7	39.0	10.6	3.1	13.7	5.9	2.2	8.1	6.9
MEDIUM -$50 M TO $100 M	5,285,672	1,272,800	453,650	1,726,450	1,769,700	531,450	2,301,150	532,300	122,700	655,000	250,100	25,772	275,872	327,200
	100.0	24.1	8.6	32.7	33.4	10.1	43.5	10.1	2.3	12.4	4.7	0.5	5.2	6.2
SMALL -UNDER $50 M	4,995,414	1,148,900	284,720	1,433,620	1,968,780	389,700	2,358,400	557,900	65,580	623,480	236,100	33,944	269,044	310,800
	100.0	23.0	5.7	28.7	39.4	7.8	47.2	11.2	1.3	12.5	4.7	0.7	5.4	6.2

Commission's Exhibit No. 575
Procter's television programs as of May 1, 1958 CX575 ✓

PROCTER & GAMBLE TELEVISION PROGRAMS AS OF MAY 1, 1958

PROGRAM	NETWORK	LENGTH	BROADCAST TIME	P&G SPONSORING BRAND(S)
		DAYTIME		
TREASURE HUNT	NBC	30 MINS.	10:30 AM MON-FRI.	* CHEER
TIC TAC DOUGH	NBC	30 MINS.	12:00 N. MON-FRI.	* DREFT, CRISCO, COMET
LOVE OF LIFE	CBS	30 MINS.	12:00 N MON-FRI.	* FLUFFO
SEARCH FOR TOMORROW	CBS	15 MINS.	12:30 P.M. MON-FRI	JOY, SPIC & SPAN, OXYDOL
GUIDING LIGHT	CBS	15 MINS.	12:45 P.M. MON-FR	NORY, DUZ, DUNCAN HINES
IT COULD BE YOU	NBC	30 MINS	12:30 P.M. MON-FRI.	* OXYDOL
AS THE WORLD TURNS	CBS	30 MINS	1:30 P.M. MON-FRI	* IVORY FLAKES, CAMAY & CRISCO, COMET
MATINEE	NBC	60 MINS.	3:00 P.M. MON-FRI.	* IVORY SNOW, LAVA & TIDE, GLEEM
BRIGHTER DAY	CBS	15 MINS.	4:00 PM MON-FRI	CHEER, CRISCO, GLEEM
EDGE OF NIGHT	CBS	30 MINS.	4:30 PM MON-FRI.	* TIDE, ZEST
QUEEN FOR A DAY	NBC	45 MINS	4:00 PM MON-FRI	* DASH, IVORY SNOW, GLEEM
COMEDY TIME	NBC	30 MINS	5:00 PM MON-FRI	* BIG TOP
		NIGHTTIME		
LORETTA YOUNG	NBC	30 MINS	10:00 PM - SUNDAY	TIDE, CAMAY, GLEEM
SUSPICION	NBC	60 MINS	10:00 PM - MONDAY	* ZEST, PRELL, JOY
WYATT EARP	ABC	30 MINS.	8:30 PM - TUESDAY	* GLEEM, DRENE
ADVENTURES OF McGRAW	NBC	30 MINS	9:00 PM - TUESDAY	LILT, TIDE, PRELL, GLEEM
THIS IS YOUR LIFE	NBC	30 MINS.	10:00 PM - WEDNESDAY	IVORY, CREST, PRELL, PAGE
PHIL SILVERS	CBS	30 MINS	9:00 PM - FRIDAY	* JOY, PAGE
THE LINE UP	CBS	30 MINS	10:00 P.M. - FRIDAY	* CHEER

* DENOTES JOINT SPONSORSHIP WITH OTHER MANUFACTURER(S) ALSO

225X

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 COMMISSION EXHIBIT NO. 575
IN THE MATTER OF The Procter & Gamble
DATE 5/1/58 WITNESS 4231
ACE REPORTING CO., Official Reporter
By

Commission's Exhibit No. 622A-B
Nielsen Trend Table 4—toilet soap

TREND TABLE 4 (SHEET 1 OF 2)

TOILET SOAP

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

LUX

1958	TOTAL ALL ITEMS	REGULAR P.INK	REGULAR BLUE	REGULAR YELLOW	REGULAR GREEN	REGULAR TOTAL	REGULAR WHITE	TOTAL REGULAR	BATH	TOTAL
JAN-JUL	$29480 100%							$2282 8.0%	$1593 5.4%	$3875 13.4%
AUG-SEP	29422 100							2150 7.3	1802 6.1	3952 13.4
OCT-NOV	29099 100							1968 6.8	1808 6.2	3776 13.0
1958-59										
DEC-JAN	$29889 100%							$ 883 7.3%	$ 539 9.0%	$3422 13.3%
FEB-MAR	28599 100							2535 9.5	1332 4.9	3837 14.4
APR-MAY	25089 100	565 2.2%	522 1.8%	469 1.6%	478 1.7%	2254 7.3%	$1291 4.3%	3439 11.5	1251 4.2	4690 17.8
JUN-JUL	34188 100	800 2.4	813 2.8	561 1.6	566 1.6	2560 7.4	1293 3.8	3833 11.2	1278 3.8	5111 15.0
AUG-SEP	36206 100	800 2.2	603 1.	541 1.5	547 1.5	2491 6.9	1149 3.2	3641 10.1	1213 3.3	4853 13.4
OCT-NOV	33797 100	724 2.1	514 1.5	46 1.1	462 1.4	2155 6.4	1.29 3.8	3[illegible] 9.4	SEE YELLOW	

1958	LIFEBUOY (OLD & NEW COMBINED) REGULAR	LIFEBUOY BATH	LIFEBUOY TOTAL	PALMOLIVE REGULAR	PALMOLIVE BATH	PALMOLIVE TOTAL
JAN-JUL	$1216 4.3%	$1258 4.4%	$2474 8.7%	$1280 4.5%	$1237 4.3%	$2505 8.8%
AUG-SEP	1206 4.1	1312 4.5	2518 8.6	1229 4.2	1348 4.5	2577 8.7
OCT-NOV	1031 3.5	1177 4.1	2208 7.6	1079 3.7	1321 4.6	2400 8.3
DEC-JAN	$ 817 3.2%	$ 909 3.7%	$1726 6.9%	$ 991 3.8%	$1082 4.2%	$2073 8.0%
FEB-MAR	807 3.1	923 3.4	1730 6.5	942 3.8	1023 3.8	1965 7.4
APR-MAY	777 2.6	936 3.2	1713 5.8	965 3.2	998 3.4	1963 6.6
JUN-JUL	900 2.6	1178 3.4	2078 6.0	1086 3.0	1031 3.0	2117 6.2
AUG-SEP	974 2.7	1321 3.6	2295 6.3	1163 3.3	1052 3.0	2288 6.3
OCT-NOV	852 2.5	1117 3.3	1969 5.8	1322 3.9	1.13 3.3	2332 6.9

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LUX

1958	BATH COLORED P.INK	BATH COLORED BLUE	BATH COLORED YELLOW	BATH COLORED GREEN	BATH COLORED TOTAL	BATH WHITE	TOTAL BATH	TOTAL COLORED	TOTAL WHITE	TOTAL LUX
AUG-SEP	NOT MARKETED									
OCT-NOV	$ 64 .2%	$ 41 .1%	$ 34 .1%	$ 37 .1%	$176 .5%	$1064 3.2%	$1240 3.7%	$2325 6.9%	$2091 6.2%	$4416 13.1%

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TREND TABLE 4 (SHEET 1 OF 2)

TOILET SOAP

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

	TOTAL WHITE REGULAR		BATH		TOTAL	LIFEBUOY (OLD & NEW COMBINED) REGULAR		BATH		TOTAL		PALMOLIVE REGULAR		BATH		TOTAL		IVORY PERSONAL SIZE	PINK CAMAY REGULAR		BATH		TOTAL		WHITE CAMAY REGULAR		BATH		TOTAL		PINK & WHITE CAMAY COMBINED REGULAR		BATH		TOTAL	
	$2282	8.0%	$1593	5.5%	$3875	13.6%	$1216	4.3%	$1258	4.4%	$2474	8.7%	$1288	4.5%	$1237	4.3%	$2505	8.8%	$2909	10.4%	NOT MARKETED						$1333	4.7%	$1029	3.6%	$2362	8.3%					
	2150	7.3	1802	6.1	3952	13.4	1206	4.1	1312	4.5	2518	8.6	1229	4.2	1348	4.5	2577	8.7	2909	9.9	$ 101	0.4%	$ 81	0.2%	$ 182	0.7%	1226	4.1	994	3.4	2220	7.5					$5402	8.3%
	1968	6.8	1808	6.2	3776	13.0	1031	3.5	1177	4.1	2208	7.6	1079	3.7	1321	4.6	2400	8.3	2833	9.7	1203	4.2	923	3.1	2126	7.3	716	2.5	708	2.4	1424	4.9					3550	12.2
	$ 883	7.3%	$ 539	4.0%	$1422	13.3%	$ 817	3.2%	$ 939	3.7%	$1756	6.9%	$ 981	3.8%	$1082	4.2%	$2063	8.0%	$2993	11.3%	$1503	5.8%	$1224	4.8%	$2727	10.6%	$ 277	1.0%	$ 284	1.1%	$ 561	2.1%					$3288	12.2%
4.3%	3439	11.9	1251	4.2	4690	16.0	777	2.6	936	3.2	1713	5.8	965	3.2	998	3.4	1963	6.6	3119	10.5	1859	6.2	1280	4.4	3139	10.6	104	0.3	100	0.3	204	0.6					3853	12.1
3.8	3633	11.2	1278	3.8	5111	15.0	900	2.8	1178	3.4	2078	6.0	1086	3.0	1891	5.2	2117	8.2	3000	10.6	1838	5.3	1398	4.1	3238	9.4	91	0.3	70	0.2	161	0.5	$1987	5.6%	$1488	4.3%	3343	11.2%
3.2	3844	11.1	1213	3.3	4853	13.4	974	2.7	1321	3.6	2295	6.3	1183	3.3	1662	3.0	2258	6.3	3645	10.0	1838	5.1	1515	4.2	3353	9.3	81	0.2	67	0.2	148	0.4	1918	5.3	1581	4.4	3500	9.9
3.3	3415	9.4	SEE	BELOW			852	2.5	1117	3.3	1969	5.8	1322	3.9	1.11	3.3	2332	6.9	3359	9.9	1955	5.8	1358	4.0	3313	9.8	65	0.2	40	0.1	105	0.3	2020	6.0	1398	4.1	3418	10.1

	LUX							
	BATH							
	COLORED	GREEN	TOTAL	BATH WHITE	TOTAL BATH	TOTAL COLORED	TOTAL WHITE	TOTAL LUX
	NOT MARKETED							
.1%	$ 37	0.1%	$176	0.5%	$1404	3.2%	$1240	3.7%	$2325	6.9%	$2091	6.2%	$4418	13.1%

6901 — Procter & Gamble Company — 622A

DATE 8/26/58 — WITNESS — Cincinnati, Ohio

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TREND TABLE 4 (SHEET 2 OF 2)

TOILET SOAP

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

6901

	WOODBURY			SWEETHEART			CASHMERE BOUQUET			OLIVE			DIAL					
1956	REGULAR	BATH	TOTAL	REGULAR	BATH	TOTAL	REGULAR	BATH	TOTAL	REGULAR	BATH	TOTAL	REGULAR	BATH	TOTAL	REGULAR	BATH	TOTAL
JAN-APR	$807 1.8%	$847 2.3%	$1154 4.1%	$839 2.9%	$818 2.2%	$1457 5.1%	$ 982 3.5%	$ 880 3.0%	$1882 6.5%				$3332 11.6%	$1912 6.6%	$5214 18.4%			
MAR-SEP	889 2.2	899 2.2	1308 4.4	817 2.8	576 2.0	1388 4.8	1088 3.8	921 3.1	1986 6.7	NOT SEGREGATED			3316 11.3	1923 6.5	5239 17.8			
OCT-NOV	888 2.4	583 1.9	1249 4.3	795 2.8	643 2.2	1438 5.0	907 3.1	832 2.9	1739 6.0	$833 1.9%	$242 0.8%	$ 778 2.7%	2987 10.3	1740 6.0	4727 16.3			
1956-57																		
DEC-JAN	$904 2.4%	$527 2.0%	$1121 4.4%	$675 2.6%	$583 2.2%	$1238 4.8%	$ 787 3.0%	$ 731 2.8%	$1498 5.8%	$678 1.8%	$286 1.1%	$ 784 2.9%	$2950 10.1%	$1479 5.0%	$4069 15.9%		NOT SEGREGA	
FEB-MAR	538 2.0	499 1.9	1037 3.9	726 2.8	614 2.3	1340 5.1	692 2.6	701 2.8	1393 5.2	772 2.9	563 2.1	1340 5.0	2841 10.0	1525 5.7	4186 15.7	8300 1.1%	$298	
APR-MAY	462 1.7	491 1.8	953 3.3	785 2.7	679 2.3	1464 5.0	709 2.3	691 2.4	1400 4.7	1282 4.3	976 3.3	2258 7.6	1353 4.5	2319 7.8	3672 12.3	785 2.7	883	
JUN-JUL	678 1.4	950 1.8	1028 3.0	748 2.2	815 1.8	1363 4.0	739 2.1	717 2.1	1456 4.2	1451 4.3	1188 3.4	2839 7.7	1717 5.1	2910 8.5	4827 13.6	1894 3.8	1448	
AUG-SEP	434 1.2	554 1.5	988 2.7	720 2.0	599 1.7	1319 3.7	802 2.2	832 2.3	1634 4.5	1738 4.8	1515 4.2	3245 9.0	1748 4.8	2984 8.0	4852 12.8	1788 4.9	1883	
OCT-NOV	426 1.3	504 1.5	930 2.8	629 1.9	558 1.6	1186 3.5	704 2.1	755 2.2	1459 4.3	1834 5.5	1556 4.6	3390 10.1	1890 5.6	2500 7.4	4390 13.0	1522 4.5	1633	

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6901

622B

TREND TABLE 4 (SHEET 2 OF 2)

TOILET SOAP

COMBINED SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

CAMAY/CAMAY BOUQUET						DOVE						DIAL						ZEST				LUX					
REGULAR		BATH		TOTAL		REGULAR		BATH		TOTAL		REGULAR		BATH		TOTAL		REGULAR		BATH		TOTAL		MEDIUM		LARGE		TOTAL		ALL OTHERS	
902	3.0%	$ 680	2.3%	$1582	5.3%							$3302	11.0%	$1912	6.4%	$5214	18.4%							$1027	3.6%	$370	1.3%	$1397	4.9%	$3196	11.2%
1088	3.6	921	3.1	1986	6.7	NOT SEGREGATED						3316	11.3	1923	6.5	5239	17.8							1088	3.7	436	1.5	1509	5.2	3629	12.3
907	3.1	832	2.9	1739	6.0	$333	1.1%	$242	0.8%	$ 778	2.7%	2987	10.3	1740	6.0	4727	16.3							898	3.1	383	1.3	1279	4.4	3066	10.5
787	3.0%	$ 731	2.8%	$1488	5.8%	$478	1.8%	$286	1.1%	$ 764	2.9%	$2590	10.1%	$1479	5.8%	$4069	15.9%		NOT SEGREGATED					$ 671	2.6%	$272	1.0%	$ 943	3.6%	$2823	10.3%
688	2.6	701	2.6	1388	5.2	777	2.9	563	2.1	1340	5.0	2641	10.0	1525	5.7	4166	15.7	$300	1.1%	$298	1.2%	$598	2.3%	607	2.2	245	1.0	852	3.2	2298	8.6
709	2.3	691	2.4	1400	4.7	1282	4.3	976	3.3	2258	7.6	1353	4.5	2319	7.8	3672	12.3	795	2.7	833	2.8	1628	5.5	828	2.8	324	1.1	1152	3.9	2304	7.8
739	2.1	717	2.1	1456	4.2	1451	4.3	1188	3.4	2639	7.7	1717	5.1	2910	8.5	4627	13.6	1294	3.8	1445	4.2	2739	8.0	988	2.8	402	1.2	1370	4.0	3862	7.8
802	2.2	832	2.3	1634	4.5	1738	4.8	1515	4.2	3248	9.0	1748	4.8	2904	8.0	4652	12.8	1785	4.9	1863	5.2	3648	10.1	1022	2.8	426	1.2	1448	4.0	2723	7.5
704	2.1	755	2.2	1459	4.3	1834	5.5	1586	4.8	3390	10.1	1890	5.6	2500	7.4	4390	13.0	1522	4.5	1633	4.8	3155	9.3	820	2.4	354	1.1	1174	3.5	2819	7.7

Commission's Exhibit No. 624A-B
Nielsen Trend Table 5—shortening and lard

TREND TABLE 5

SHORTENING AND LARD

CONSUMER SALES - BY ITEM

POUND BASIS (000)

1955	TOTAL ALL ITEMS	SPRY 1 LB.	SPRY OTHER SIZES	SPRY TOTAL	CRISCO 1 LB.	CRISCO 3 LB.	CRISCO 6 LB.	CRISCO TOTAL	FLUFFO 1 LB.	FLUFFO 3 LB.	FLUFFO TOTAL	SNOWDRIFT	JEWEL	MRS. TUCKER	SWIFTENING	ALL OTHER SHORTENINGS (EXCL. OILS)	REMAINING LARD (PACKAGE AND BULK)
FEB-MAR	185332 100%	2938 1.6%	13100 7.1%	16038 8.7%	9165 4.9%	38111 20.5%	1572 0.8%	48848 26.3%	650 0.4%	6300 3.4%	7010 3.8%	6124 3.3%	4308 2.3%	6742 3.7%	4413 2.4%	20467 11.0%	71354 38.5%
APR-MAY	186229 100	2887 1.5	13895 7.5	16782 9.0	8972 4.8	35994 19.3	1668 0.9	46580 25.0	688 0.4	7151 3.8	7834 4.2	7743 4.2	4544 2.4	6479 3.5	4042 2.2	21041 1 .8	72304 38.7
JUN-JUL	194614 100	2511 1.3	11805 6.1	14316 7.4	8809 4.3	34737 17.J	1382 0.7	44638 22.9	1359 0.7	13621 7.0	14980 7.7	6158 3.2	4618 2.4	7020 3.6	3606 1.8	18178 9.4	81102 41.8
AUG-SEP	199919 .0	2703 1.4	11686 5.8	14389 7.2	8822 4.4	34647 17.J	1422 0.7	44821 22.4	1807 0.9	11858 6.0	13665 6.9	6236 3.1	5080 2.5	5986 3.0	4252 2.1	20811 10.4	84673 42.4
OCT-NOV	210940 100	2671 1.2	76033 6.5	16704 7.7	9103 4.2	39136 18.J	1538 0.7	49777 22.9	2235 1.1	17409 8.0	19644 9.1	6476 3.0	4858 2.2	6732 3.1	4203 2.0	22519 10.3	80827 38.7
1955-56																	
DEC-JAN	184809 100%	2358 1.3%	11780 6.3%	14138 7.6%	6792 4.0%	36357 19.3%	1349 .7%	46498 25.2%	2370 1.3%	15634 8.5%	18004 9.8%	7819 4.2%	3562 1.9%	5291 2.9%	4403 2.4%	19010 10.2%	66086 35.8%
FEB-MAR	170980 100	2148 1.3	10049 5.8	12197 7.1	8827 5.1	33710 19.7	1045 0.6	43582 25.4	2197 1.3	14616 8.5	16813 9.8	5767 3.4	4104 2.4	4658 2.6	4597 2.7	19081 11.2	60571 35.4
APR-MAY	171771 100	2118 1.2	8691 4.9	10819 6.1	5643 3.1	33859 19.5	1 .68 0.7	43364 25.3	2881 1.2	11241 6.5	13278 7.7	5788 3.4	5087 2.9	4449 2.6	5610 3.3	18878 10.9	64830 37.8
JUN-JUL	172235 100	COMBINED		10480 6.1	COMB. WITH 3 LB.	38104 22J	1018 0.6	39122 22.7	COMBINED		12888 7.0	6099 3.5	NOT SEG.	4965 2.9	NOT SEG.	32408 18.8	67166 39.0
AUG-SEP	189188 100			12167 6.4		40488 21.4	1126 0.6	41987 22.0			14888 7.4	7141 3.8		4852 2.5		23127 17.5	78409 40.4
OCT-NOV	208897 100			13787 6.6		48192 21.5	1034 0.5	48846 22.0			14088 6.7	540 3.2		5023 2.3		40204 19.2	83818 40.0

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624A
6901 Procter & Gamble Company
8/26/58 Dec
By Dec

FEDERAL TRADE COMMISSION
Docket No. 6401 Exhibit No. 1024B

A-2

TREND TABLE 5

SHORTENING AND LARD

CONSUMER SALES - BY ITEM

POUND BASIS (000)

1956	TOTAL ALL ITEMS	SPRY	CRISCO 1 AND 3 LB. COMBINED	CRISCO 6 LB.	CRISCO TOTAL	FLUFFO ALL SIZES	SNOWDRIFT ALL SIZES	MRS. TUCKER ALL SIZES	ALL-OTHER SHORTENINGS (INCL. WHIRL, LIQUID JEWEL & INSTANT SPRY)	TOTAL LARD
JUN-JUL	172235 100%	10430 6.1%	38104 22.1%	1018 0.6%	39122 22.7%	12085 7.0%	6059 3.5%	4965 2.9%	32408 18.8%	67166 39.0%
AUG-SEP	192442 100	12887 6.6	41031 21.4	1064 0.5	42092 21.9	14639 7.6	7599 4.0	4901 2.5	34513 18.0	75808 39.4
OCT-NOV	209907 100	13757 6.6	45192 21.5	1054 0.5	46246 22.0	14089 6.7	6840 3.2	5023 2.3	40354 19.2	83918 40.0
1956-57										
DEC-JAN	185998 100%	11911 6.4%	45933 24.7%	1061 0.6%	46994 25.3%	12756 6.8%	6693 3.6%	4903 2.6%	36811 19.8%	66068 35.5%
FEB-MAR	177983 100	11634 6.5	39942 22.5	935 0.5	40877 23.0	11195 6.3	8085 4.5	4998 2.8	38328 21.5	62866 35.4
APR-MAY	183644 100	11488 6.2	41285 22.5	894 0.5	42179 23.0	10293 5.6	9138 5.0	5056 2.7	34886 19.0	70624 38.5
JUN-JUL	183646 100	9824 5.2	41932 22.8	904 0.5	42836 23.3	10177 5.5	8210 4.5	5279 2.9	33732 18.4	73788 40.2
AUG-SEP	205202 100	9835 4.7	46925 22.9	1084 0.5	47989 23.4	13881 6.7	7615 3.7	NOT SEG.	35902 17.5	83012 40.5
OCT-NOV	218744 100	12769 5.8	51729 23.7	1009 0.4	52738 24.1	13350 6.2	6251 2.8		39108 17.9	87120 39.8
1957-58										
DEC-JAN	200066 100%	12181 6.1%	51040 25.5%	1028 0.5%	52068 26.0%	11849 5.9%	7556 3.8%		34990 17.5%	74760 37.4%

233X

1957	SWIFTNING ALL SIZES
JUN-JUL	NOT SEG.
AUG-SEP	7188 3.5%
OCT-NOV	7408 3.4
1957-58	

Commission's Exhibit No. 625A-E
Nielsen Trend Table 4—package detergents

6901 — Procter & Gamble Co — 1625A

DATE 8/26/58 — Reporting Co. official Reporter

TREND TABLE 4 - SUPPLEMENTARY SHEET

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT NORMAL COST TO CONSUMER

HEAVY DUTY HIGH SUDSING SYNTHETICS

		TIDE																													
1955-56	TOTAL ALL ITEMS	16 LBS. 1 OZ.		KING SIZE		GIANT		LARGE		SMALL		TOTAL		KING 32 OZ.		GIANT		LARGE		SMALL		TOTAL		GIANT		LARGE		SMALL			
DEC-JAN	$107639	100%	$410	0.4%	$2020	1.8%	$11363	10.6%	$12556	11.6%	$560	0.5%	$27099	25.1%			$4533	4.2%	$6043	5.6%	$ 55	-	$10631	9.9%	$1437	1.3%	$1786	1.7%	$ 8	-		
FEB-MAR	107977	100	551	0.5	2277	2.1	10773	9.9	11781	10.9	501	0.5	25883	23.9			4039	3.8	5508	5.1	55	-	9602	8.9	2072	1.8	2415	2.2	5	0.1%		
APR-MAY	114447	100	477	0.4	2466	2.1	11219	9.8	12601	11.0	612	0.6	27381	23.9	$ 14	-	4539	4.0	5668	4.9	65	0.1%	10286	9.0	2241	2.0	2797	2.4	5	-		
JUN-JUL	118263	100	515	0.5	2574	2.1	11795	10.0	13273	11.2	691	0.6	28848	24.4	418	0.4%	4414	3.7	6217	5.3	66	-	11114	9.4	2326	2.0	2738	2.3	8	-		
AUG-SEP	124606	100	573	0.5	3945	3.2	12101	9.7	13273	10.6	657	0.5	30546	24.5	1018	0.8	4343	3.5	6375	5.1	63	0.1	11799	9.5	2436	1.9	2843	2.3	4	-		
OCT-NOV	125086	100	645	0.5	3421	2.8	12302	9.8	13240	10.6	562	0.4	30170	24.1	1023	0.8	4647	3.8	6034	4.8	52	-	11756	9.4	2486	2.0	2865	2.3	3	-		
1956-57																															
DEC-JAN	$117836	100%	$682	0.6%	$3185	2.7%	$11455	9.7%	$12589	10.7%	$559	0.4%	$28450	24.1%	$1392	1.0%	$4361	3.7%	$5945	5.0%	$ 53	0.1%	$11481	9.8%	$2272	2.0%	$2682	2.1%	$ 3	-		
FEB-MAR	118694	100	797	0.6	3113	2.7	11694	9.8	11971	10.1	524	0.4	28098	23.5	987	0.9	4285	3.6	5652	4.7	43	0.1	10971	9.3	2083	1.7	2233	1.9	1	-		
APR-MAY	129003	100	810	0.6	3230	2.6	12545	10.1	12486	10.0	607	0.5	29858	23.7	1031	0.8	4368	3.5	6171	4.9	51	0.1	11821	9.3	2512	2.0	2835	2.1	1	-		
JUN-JUL	129077	100	943	0.7	3378	2.6	12752	10.1	12582	9.9	849	0.5	30254	23.8	1131	0.9	4017	3.9	6384	4.8	73	0.1	12275	9.7	2548	2.0	2737	2.2	1	-		
AUG-SEP	132819	100	907	0.7	4166	3.2	11641	8.9	14517	10.9	673	0.5	32134	24.2	1383	0.8	5049	3.8	6476	4.9	73	0.1	12881	9.6	2611	2.0	2882	2.1	2	-		
OCT-NOV	136547	100	1134	0.8	3711	2.7	12578	9.2	13235	9.7	527	0.5	31255	22.9	1386	0.8	4676	3.4	6207	4.5	82	0.1	12321	8.6	2883	2.1	3112	2.2	5	-		

235X

1956	20 OZ.	
OCT-NOV		NOT A
1956-57		
DEC-JAN	$ 161	0.1%
FEB-MAR	641	0.5
APR-MAY	1053	0.8
JUN-JUL	1332	1.1
AUG-SEP	1404	1.0
OCT-NOV	1330	0.9

6901 — Procter - Gamble Co — 1625A

DATE 8/26/58 — Wing Co. official Reporter

TREND TABLE 4 - SUPPLEMENTARY (SHEET 1 OF 5)

PACKAGE DETERGENTS

COMBINED SALES - BY ITEM - DOLLAR BASIS (000)

AT NORMAL COST TO CONSUMER

HEAVY DUTY HIGH SUDSING SYNTHETICS

	DRIFT							DRYDEL							FAB							RINSO BLUE		
	TOTAL	KING 32 OZ.		GIANT	LARGE	SMALL	TOTAL	GIANT	LARGE	SMALL	TOTAL	16 LBS. 1 OZ.		KING SIZE	GIANT	LARGE	SMALL	TOTAL	GIANT	LARGE	TOTAL
	$27099 25.1%			$4533 4.3%	$6043 5.6%	$ 38 -	$10831 9.9%	$1437 1.3%	$1768 1.7%	$ 8 -	$3211 3.0%			$401 0.3%	$3323 3.1%	$4886 4.6%	$139 0.1%	$8729 8.1%	$1881 1.7%	$2119 2.0%	$3940 3.7%
	25883 23.9			4039 3.8	5508 5.1	55 -	9602 8.9	2972 1.8	2415 2.2	5 0.1%	4492 4.1			514 0.5	2699 2.4	4988 4.6	128 0.1	8299 7.6	3430 2.3	1771 1.7	4201 4.0
	27381 23.3	$ 14		4539 4.0	5668 4.9	65 0.1%	10286 9.0	2241 2.0	2797 2.4	5 -	5043 4.4	$ 2	-	602 0.5	3285 2.8	4393 3.9	126 0.1	8388 7.3	1728 1.5	1981 1.7	3684 3.2
	28848 24.4	418	0.4%	4414 3.7	6217 5.3	65 -	11114 9.4	2328 2.0	2738 2.3	8 -	5072 4.3	11	-	754 0.7	3291 2.7	4518 3.9	153 0.1	8727 7.4	1789 1.4	2561 2.2	4290 3.6
	30548 24.5	1018	0.8	4343 3.5	6375 5.1	63 0.1	11799 9.5	2436 1.9	2843 2.3	4 -	5283 4.2	16	-	701 0.6	3020 2.4	4431 3.6	130 0.1	8298 6.7	1889 1.5	2277 1.8	4086 3.3
	30170 24.1	1023	0.8	4647 3.8	6034 4.8	52 -	11756 9.4	2486 2.0	2865 2.3	3 -	5354 4.3	16	-	470 0.4	3095 2.5	4380 3.5	118 0.1	8079 6.5	2484 1.9	1975 1.6	4459 3.5
	$28450 24.1%	$1092	1.0%	$4381 3.7%	$5945 5.0%	$ 53 0.1%	$11481 9.8%	$2272 2.0%	$2482 2.1%	$ 3 -	$4757 4.1%	$ 10	-	$377 0.3%	$2643 2.2%	$3886 3.3%	$111 0.1%	$7027 5.9%	$1781 1.5%	$1910 1.6%	$3671 3.1%
	28090 23.5	987	0.9	4285 3.6	5652 4.7	47 0.1	10971 9.3	2083 1.7	2233 1.9	1 -	4317 3.6	8	-	373 0.3	2670 2.3	3844 3.2	134 0.1	6999 5.9	1710 1.4	1859 1.6	3570 3.0
	29858 23.7	1031	0.8	4368 3.5	6171 4.9	51 0.1	11621 9.3	2512 2.0	2635 2.1	1 -	5148 4.1	8	-	368 0.3	2884 2.3	4068 3.3	112 0.1	7440 6.0	2022 1.6	1988 1.6	4010 3.2
	30254 23.8	1131	0.9	4817 3.9	6384 4.8	73 0.1	12275 9.7	2568 2.0	2737 2.2	1 -	5322 4.2	6	-	357 0.3	2800 2.2	4084 3.2	110 0.1	7339 5.8	1899 1.5	2035 1.6	3940 3.1
	32134 24.2	1383	0.8	5049 3.8	6476 4.9	73 0.1	12881 9.6	2611 2.0	2882 2.1	2 -	5503 4.1	7	-	408 0.3	2585 1.9	4674 3.4	129 0.1	7583 5.7	2152 1.5	2103 1.6	4272 3.2
	31235 22.9	1366	0.8	4676 3.4	6207 4.5	82 0.1	12321 9.0	2883 2.1	3012 2.2	5 -	5924 4.3	9	-	591 0.5	2656 1.9	4545 3.3	162 0.2	7963 5.9	2281 1.5	2231 1.4	4384 2.9

1956	BLUE DOT DUZ 20 OZ.		BLUE DOT DUZ 49.25 OZ.		TOTAL		RINSO BLUE MEDIUM		DRYDEL KING 83.75 OZ.	
OCT-NOV	NOT MARKETED						NOT MKTD.			
1956-57										
DEC-JAN	$ 161	0.1%	$ 40		$ 141	0.1%	$ -	-		
FEB-MAR	641	0.5	301	0.3%	942	0.5	1	-	NOT MKTD.	
APR-MAY	1053	0.8	556	0.5	1609	1.3	3	-	-	-
JUN-JUL	1332	1.1	797	0.6	2129	1.7	6	-	$ 16	-
AUG-SEP	1404	1.0	907	0.7	2311	1.7	7	-	28	-
OCT-NOV	1330	0.9	843	0.7	2173	1.6	2	-	24	-

(a) AUG-SEP. 1956 SALES & SHARES REVISED, BASED ON THE PROJECTION CONTROLS AS USED IN OCT-NOV. 1956.

TREND TABLE 4 - SUPPLEMENTARY. (SHEET 2 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT NORMAL COST TO CONSUMER

FEDERAL

| | HEAVY DUTY HIGH SUDSER SYNTHETICS | | |

TREND TABLE 4 - SUPPLEMENTARY (SHEET 2 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT NORMAL COST TO CONSUMER

FEDERAL TRADE COMMISSION
Docket No. 6401 Complaint's Exhibit No. 625B

SYNTHETICS SURF				BLUE SILVER DUST								HEAVY DUTY LOW SUDSER SYNTHETICS																					
												DASH																					
												FLUFFY					DENSE																
LARGE		TOTAL		KING		GIANT		LARGE		TOTAL		GIANT 66.50 AND 81.50 OZ.		REGULAR 27 OZ.		TOTAL	20 LBS. 1 OZ.		9 LBS. 13 OZ. (INCL. 10 LBS. AND 81.50 OZ.)		25 OZ.		TOTAL		TOTAL DASH		23, 25 50 AND 100 LBS.		20 LB.		10 LB.		5 LB.		24 OZ.		TOTAL	
489	1.3%	$2792	2.0%	-	-	$635	0.6%	$1037	1.0%	$1672	1.6%	$ 41	-	$ 70	0.1%	$111	0.1%	$ 82	0.1%	$ 500	0.4%	$ 710	0.7%	$1295	1.2%	$1406	1.3%	$1291	1.3%	$ 32	-	$2232	1.9%	-	-	$1150	1.1%	$4908	4.3%
504	1.4	2507	2.3	-	-	668	0.6	1082	1.0	1750	1.6	23	0.1%	59	-	82	0.1	182	0.2	821	0.8	1030	0.9	2033	1.9	2115	2.0	1259	1.3	18	-	1983	1.8	$ 3	-	1084	1.0	4297	4.1
531	1.4	2706	2.4	-	-	892	0.8	1091	1.0	1983	1.8	8	-	30	-	38	-	251	0.3	1167	1.0	1409	1.2	2827	2.5	2865	2.5	1099	1.0	27	-	2005	1.8	-	-	115	1.0	4257	3.8
221	1.0	2817	2.2	-	-	832	0.7	1201	1.0	2033	1.7	1	-	13	-	14	-	89	0.2	1232	1.1	1542	1.3	3083	2.6	3077	2.6	1050	0.9	7	-	2015	1.7	-	-	1116	0.9	4188	3.5
366	1.2	2791	2.2	$ 7	-	879	0.7	1250	1.0	2136	1.7	1	-	14	-	15	-	395	0.3	1539	1.3	1677	1.3	3611	2.9	3625	2.9	1274	1.0	8	-	2168	1.8	-	-	1299	1.0	4749	3.8
268	1.0	2212	1.7	17	0.1%	912	0.7	1169	0.9	2098	1.7	-	-	11	-	11	-	373	0.3	1651	1.3	1590	1.3	3614	2.9	3625	2.9	1191	1.0	1	-	2268	1.8	-	-	1324	1.1	4784	3.9
981	0.9%	$2423	2.1%	$ 13	-	$969	0.9%	$1103	0.9%	$2085	1.7%	$ 1	-	$ 3	-	$ 4	-	$342	0.4%	$1486	1.2%	$1480	1.3%	$3356	2.9%	$3360	2.9%	$1181	1.1%	$ 1	-	$2062	1.8%	-	-	$1125	0.9%	$4349	3.8%
889	0.8	2232	1.9	40	-	1020	0.9	1080	0.9	2120	1.8	-	-	1	-	1	-	366	0.3	1501	1.2	1426	1.2	3293	2.7	3294	2.7	1149	1.0	-	-	2064	1.7	-	-	591	0.9	4204	3.6
943	0.8	2246	1.8	64	0.1%	1280	0.8	1138	0.9	2250	1.8	(#) -	-	1	-	1	-	481	0.4	1824	1.4	1488	1.2	3781	3.0	3782	3.0	1218	1.0	-	-	2188	1.8	-	-	1048	0.8	4452	3.8
303	0.8	2272	1.3	94	0.1	1329	0.9	1120	0.9	2247	1.8	NOT SEGREGATED						481	0.4	1832	1.4	1439	1.2	3512	3.0			1274	1.0	-	-	2171	1.7	-	-	1109	0.9	4554	3.8
036	0.8	2132	1.8	199	0.1	1175	0.9	1286	1.0	2613	2.0							479	0.3	1824	1.4	1556	1.2	3857	2.9			1399	1.0	-	-	2333	1.8	-	-	1173	0.9	4905	3.7
080	0.8	2194	1.9	151	.1	1196	0.8	1201	0.9	2518	1.8							511	0.4	1897	1.4	1555	1.1	3963	2.9			1538	1.1	-	-	2621	2.0	-	-	1386	1.0	5525	4.1

(6) AUG-SEP. 1956 SALES & SHARES REVISED, BASED ON THE PROJECTION CONTROLS AS USED IN OCT-NOV 1956.
(##) REPRESENTS 66.50 OZ. ONLY.

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PAGE

TREND TABLE 4 - SUPPLEMENTARY (SHEET 3 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT NORMAL COST TO CONSUMER

FEDERAL TRADE COMMISSION
Docket No. 6901 Complaint's Exhibit No.

| | HEAVY DUTY LOW SUDSER SYNTHETICS | | |

TREND TABLE 4 - SUPPLEMENTARY (SHEET 3 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT NORMAL COST TO CONSUMER

FEDERAL TRADE COMMISSION
Docket No. 6901 Complaint's Exhibit No. 6 x C

HEAVY DUTY LOW SUDSER SYNTHETICS AD																																			
10 LBS. 1 OZ.		10 LBS.		80.75 OZ.		56 OZ.		50 OZ.		24 OZ.		TOTAL		64 OZ.		32 OZ.		16 OZ.		TOTAL		GIANT		LARGE		SMALL		TOTAL		GIANT		LARGE		SMALL		TOTAL	
-	-	$ 21	-	-	-	$ 63	-	$576	0.6%	$ 786	0.7%	$1440	1.3%	-	-	-	-	-	-	-	-	$1360	1.3%	$1883	1.7%	$ 99	0.1%	$3302	3.1%	$346	0.3%	$782	0.7%	$ 42	-	$1170	1.0%
-	-	27	-	$ 6	-	70	0.1%	561	0.5	699	0.7	1363	1.3	-	-	$ 312	0.2%	$ 888	0.9%	$1200	1.1%	1125	1.0	1785	1.7	51	-	2961	2.7	309	0.3	663	0.7	38	-	1010	1.0
$ 9	-	49	0.1%	84	-	80	0.1	496	0.4	1471	1.3	2189	1.9	-	-	755	0.6	1585	1.4	2340	2.0	1065	0.9	1805	1.6	42	-	2912	2.5	284	0.2	869	0.8	35	-	1178	1.0
20	-	44	-	133	0.1%	85	-	489	0.5	1199	1.0	1970	1.6	$ 53	0.1%	1138	0.9	1629	1.4	2820	2.4	1204	1.0	1884	1.6	33	-	3081	2.6	283	0.3	817	0.7	39	-	1139	1.0
22	-	41	0.1	132	0.1	91	0.1	594	0.6	953	0.8	1838	1.5	252	0.2	1402	1.2	1032	0.8	2726	2.2	1263	1.0	1760	1.4	38	-	3061	2.4	320	0.2	799	0.6	31	0.1%	1150	0.9
31	-	26	-	93	0.1	134	0.1	539	0.4	772	0.6	1569	1.2	310	0.3	1457	1.1	1174	1.0	2941	2.4	1059	0.9	1600	1.2	33	0.1	2692	2.2	268	0.2	822	0.6	22	-	1110	0.8
$ 28	-	$ 27	-	$100	0.1%	80	0.1%	$586	0.5%	$588	0.5%	$1415	1.2%	$238	0.2%	$952	0.8%	$ 757	0.7%	$1947	1.7%	$1182	1.0%	$1539	1.3%	$ 29	-	$2720	2.3%	$232	0.2%	$615	0.5%	$ 19	-	$ 866	0.7%
27	-	148	0.1%	88	0.1	70	-	585	0.5	543	0.5	1459	1.2	333	0.3	1415	1.2	1309	1.1	3057	2.6	1088	0.9	1661	1.2	30	-	2539	2.1	232	0.2	509	0.4	12	-	747	0.6
23	-	310	0.2	52	-	74	0.1	568	0.5	573	0.5	1802	1.3	387	0.3	1407	1.1	1271	1.0	3065	2.4	1103	0.9	1510	1.2	42	-	2955	2.1	220	0.2	483	0.4	13	-	833	0.6
19	-	353	0.3	2	-	75	-	559	0.5	545	0.4	1532	1.4	414	0.3	1929	1.5	1661	1.3	4202	3.3	1035	0.9	1435	1.1	40	-	2480	1.9	230	0.2	460	0.4	11	-	791	0.6
16	-	342	0.3	33	-	58	0.1	556	0.4	530	0.4	1518	1.2	717	0.5	1949	1.4	1530	1.2	4196	3.1	1081	0.8	1344	1.0	42	-	2447	1.8	215	0.1	488	0.4	12	-	712	0.5
12	-	377	0.3	33	-	99	-	594	0.5	553	0.4	1656	1.2	984	0.7	2372	1.7	1783	1.3	5175	3.8	981	0.7	1236	0.9	35	-	2252	1.6	198	0.2	432	0.3	10	-	888	0.9

HEAVY DUTY LIQUIDS WISK																																			
64 OZ.		32 OZ.		16 OZ.		TOTAL		128 OZ.		22 OZ.		TOTAL		128 OZ.		22 OZ.		TOTAL		128 OZ.		22 OZ.		TOTAL		128 OZ.		22 OZ.		TOTAL		128 OZ.		22 OZ.		TOTAL	
-	-	-	-	-	-	-	-	$1360	1.3%	$1883	1.7%	$ 99	0.1%	$3302	3.1%	$346	0.3%	$782	0.7%	$ 42	-	$1170	1.0%														
-	-	$ 312	0.2%	$ 888	0.9%	$1200	1.1%	1125	1.0	1785	1.7	51	-	2961	2.7	309	0.3	663	0.7	38	-	1010	1.0														
-	-	755	0.6	1585	1.4	2340	2.0	1065	0.9	1805	1.6	42	-	2912	2.5	284	0.2	869	0.8	35	-	1178	1.0														
$ 53	0.1%	1138	0.9	1629	1.4	2820	2.4	1204	1.0	1884	1.6	33	-	3081	2.6	283	0.3	817	0.7	39	-	1139	1.0														
252	0.2	1402	1.2	1032	0.8	2726	2.2	1263	1.0	1760	1.4	38	-	3061	2.4	320	0.2	799	0.6	31	0.1%	1150	0.9														
310	0.3	1457	1.1	1174	1.0	2941	2.4	1059	0.9	1600	1.2	33	0.1	2692	2.2	268	0.2	822	0.6	22	-	1110	0.8														
$ 238	0.2%	$ 952	0.8%	$ 757	0.7%	$1947	1.7%	$1182	1.0%	$1539	1.3%	$ 29	-	$2720	2.3%	$232	0.2%	$615	0.5%	$ 19	-	$ 866	0.7%														
333	0.3	1415	1.2	1309	1.1	3057	2.6	1088	0.9	1661	1.2	30	-	2539	2.1	232	0.2	509	0.4	12	-	747	0.6														
387	0.3	1407	1.1	1271	1.0	3065	2.4	1103	0.9	1510	1.2	42	-	2955	2.1	220	0.2	483	0.4	13	-	833	0.6														
414	0.3	1929	1.5	1661	1.3	4202	3.3	1035	0.9	1435	1.1	40	-	2480	1.9	230	0.2	460	0.4	11	-	791	0.6														
717	0.5	1949	1.4	1530	1.2	4196	3.1	1081	0.8	1344	1.0	42	-	2447	1.8	215	0.1	488	0.4	12	-	712	0.5														
984	0.7	2372	1.7	1783	1.3	5175	3.8	981	0.7	1236	0.9	35	-	2252	1.6	198	0.2	432	0.3	10	-	888	0.9														

HEAVY DUTY SOAPS DUZ																																			
GIANT		LARGE		SMALL		TOTAL		GIANT		LARGE		SMALL		TOTAL		GIANT		LARGE		SMALL		TOTAL		GIANT		LARGE		SMALL		TOTAL		GIANT		LARGE		SMALL		TOTAL	
$1360	1.3%	$1883	1.7%	$ 99	0.1%	$3302	3.1%	$346	0.3%	$782	0.7%	$ 42	-	$1170	1.0%																						
1125	1.0	1785	1.7	51	-	2961	2.7	309	0.3	663	0.7	38	-	1010	1.0																						
1065	0.9	1805	1.6	42	-	2912	2.5	284	0.2	869	0.8	35	-	1178	1.0																						
1204	1.0	1884	1.6	33	-	3081	2.6	283	0.3	817	0.7	39	-	1139	1.0																						
1263	1.0	1760	1.4	38	-	3061	2.4	320	0.2	799	0.6	31	0.1%	1150	0.9																						
1059	0.9	1600	1.2	33	0.1	2692	2.2	268	0.2	822	0.6	22	-	1110	0.8																						
$2720	2.3%	$2232	0.2%	$615	0.5%	$ 19	-	$ 866	0.7%																												
2539	2.1	232	0.2	509	0.4	12	-	747	0.6																												
2955	2.1	220	0.2	483	0.4	13	-	833	0.6																												
2480	1.9	230	0.2	460	0.4	11	-	791	0.6																												
2447	1.8	215	0.1	488	0.4	12	-	712	0.5																												
2252	1.6	198	0.2	432	0.3	10	-	888	0.9																												

HEAVY DUTY SOAPS RINSO SOAP																																			
GIANT		LARGE		SMALL		TOTAL		GIANT		LARGE		SMALL		TOTAL		GIANT		LARGE		SMALL		TOTAL		GIANT		LARGE		SMALL		TOTAL		GIANT		LARGE		SMALL		TOTAL	
$346	0.3%	$782	0.7%	$ 42	-	$1170	1.0%																														
309	0.3	663	0.7	38	-	1010	1.0																														
284	0.2	869	0.8	35	-	1178	1.0																														
283	0.3	817	0.7	39	-	1139	1.0																														
320	0.2	799	0.6	31	0.1%	1150	0.9																														
268	0.2	822	0.6	22	-	1110	0.8																														
$232	0.2%	$615	0.5%	$ 19	-	$ 866	0.7%																														
232	0.2	509	0.4	12	-	747	0.6																														
220	0.2	483	0.4	13	-	833	0.6																														
230	0.2	460	0.4	11	-	791	0.6																														
215	0.1	488	0.4	12	-	712	0.5																														
198	0.2	432	0.3	10	-	888	0.9																														

1967	WISK 128 OZ.	WISK 22 OZ.
FEB-MAR	NOT RPTD.	
APR-MAY	- -	
JUN-JUL		NOT RPTD.
AUG-SEP		$ 9 -
OCT NOV		37 0.1%

TPDD TABLE 4-SUPPLEMENTARY (SHEET 4 OF 9)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT RETAIL COST TO CONSUMER

6901

	HEAVY DUTY SOAPS										LIGHT DUTY SYNTHETICS											
	INSTANT FELS NAPTHA	KIRK	SILVER DUST SUDS						DRIFT				VEL				TYCHO				OUTLOOK	
1955-56	ALL SIZES	65 OZ.	GIANT		LARGE		TOTAL		GIANT	LARGE	TOTAL		65 OZ.	GIANT	LARGE	TOTAL	33, 35, AND 37.50 OZ.	12.25 OZ.	TOTAL		GIANT	LARGE
DEC-JAN			$123	0.1%	$151	0.2%	$274	0.3%	$827	0.8%	$2300	2.1%	$3127	2.9%		$831	0.8%	$2090	2.8%	$2921	2.8%	$667	0.6%	$1535	1.4%	$2202	2.0%	$1317	1.2%	$3855	2.1%
FEB-MAR			60	0.1	69	0.1	129	0.2	727	0.6	2140	2.0	2867	2.6		777	0.7	1803	1.7	2580	2.4	684	0.6	1515	1.4	2179	2.0	1368	1.2	3489	2.3
APR-MAY			25	-	32	0.1	57	0.1	898	0.6	2137	1.9	2805	2.5		703	0.6	1836	1.6	2539	2.2	642	0.6	1493	1.3	2135	1.9	1083	0.9	1788	1.3
JUN-JUL			21	-	18	-	39	-	688	0.6	2020	1.7	2708	2.3		665	0.5	1685	1.5	2350	2.0	599	0.5	1489	1.2	2088	1.7	699	0.6	1266	1.1
AUG-SEP	$1824 1.4%	-	16	-	22	-	38	-	813	0.7	2078	1.7	2891	2.4	-	664	0.5	1764	1.4	2428	1.9	672	0.5	1588	1.3	2260	1.8	771	0.6	1227	0.9
OCT-NOV	2089 1.6	-	15	-	11	-	26	-	780	0.6	1907	1.5	2687	2.1	-	635	0.5	1757	1.4	2392	1.9	677	0.6	1488	1.2	2165	1.8	851	0.5	1282	1.0
1956-57																														
DEC-JAN	$1723 1.3%	-	$ 14	-	$ 6	-	$ 20	-	$717	0.6%	$1919	1.6%	$2636	2.2%	-	$740	0.6%	$1615	1.4%	$2355	2.0%	$866	0.6%	$1499	1.3%	$2165	1.8%	$548	0.4%	$ 985	0.8%
FEB-MAR	1679 1.6	-	10	-	9	-	19	-	685	0.6	1930	1.6	2615	2.2	-	657	0.6	1548	1.3	2205	1.9	708	0.6	1507	1.3	2215	1.9	372	0.3	687	0.6
APR-MAY	1877 1.5	-	12	-	6	-	18	-	777	0.6	2050	1.6	2827	2.2	-	635	0.5	1522	1.2	2157	1.7	679	0.6	1517	1.2	2196	1.8	199	0.2	302	0.2
JUN-JUL	1834 1.4	NOT SEGREGATED							663	0.5	1321	1.5	2014	2.6	-	632	0.5	1434	1.1	2066	1.6	665	0.5	1492	1.2	2157	1.7	7	-	121	0.1
AUG-SEP	1948 1.5								674	0.5	1835	1.4	2509	1.9	-	621	0.5	1546	1.1	2167	1.6	669	0.5	1541	1.2	2210	1.7	52	-	66	0.1
OCT-NOV	1994 1.5								659	0.4	1789	1.3	2448	1.7	-	607	0.5	1546	1.1	2153	1.6	727	0.6	(ββ) 1674	1.2	2401	1.8	32	-	35	-

241X

1956	KIR
OCT-NOV	80
1956-57	
DEC-JAN	8
FEB-MAR	6
APR-MAY	3
JUN-JUL	10
AUG-SEP	9
OCT-NOV	8

(β) AUG-SEP 1956 SALES & SHARES REVISED, BASED ON THE PROJECTION CONTROLS AS USED IN
(ββ) INCLUDES 14 OZ. AS OF OCT-NOV. 1957.

TREND TABLE 4-SUPPLEMENTARY (SHEET 4 OF 5)

PACKAGE REQUIREMENTS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT NORMAL COST TO CONSUMER

6401 6x50

BRUT	LIGHT DUTY SYNTHETICS												LIGHT DUTY LIQUIDS											
	VOL			TRIOM									JOY							LUX LIQUID				
							33, 36, AND						BOTTLES			CANS								
LARGE	TOTAL	66 OZ.	GIANT	LARGE	TOTAL	37.50 OZ.	12.25 OZ.	TOTAL	GIANT	LARGE	TOTAL	GIANT	LARGE	TOTAL	TOTAL JOY	32 OZ.	22 OZ.	12 OZ.	TOTAL
$2369 2.1%	$3127 2.9%		$831 0.8%	$2090 2.0%	$2921 2.8%	$867 0.8%	$1535 1.4%	$2202 2.0%	$1317 1.2%	$2255 2.1%	$3572 3.3%								$3572 3.3%	$181 0.2%	$2972 2.7%	$2674 2.5%	$5827 5.4%
2140 2.0	2887 2.6		777 0.7	1803 1.7	2580 2.4	684 0.6	1315 1.4	2179 2.0	1366 1.2	2409 2.3	3775 3.5	$ 23 0.1%	$ 26 -	$ 49 0.1%	3824 3.6	671 0.6	2488 2.2	2886 2.6	6045 5.2
2137 1.9	2868 2.5		703 0.6	1836 1.6	2539 2.2	642 0.6	1493 1.3	2135 1.9	1083 0.9	1755 1.5	2838 2.4	446 0.4	627 0.6%	1073 1.0	3881 3.4	646 0.5	2088 1.9	3162 2.7	5891 5.1
2020 1.7	2708 2.3		668 0.5	1685 1.5	2350 2.0	599 0.5	1489 1.2	2088 1.7	699 0.6	1286 1.1	1985 1.7	897 0.7	1301 1.1	2198 1.8	4133 3.5	838 0.7	2378 2.0	2907 2.1	5788 4.8
2078 1.7	2881 2.4	- -	664 0.5	1784 1.4	2428 1.9	672 0.5	1586 1.3	2268 1.8	713 0.6	1227 0.9	1938 1.5	1087 0.9	1485 1.1	2512 2.0	4480 3.5	888 0.7	2572 2.3	2244 1.9	6079 4.9
1907 1.5	2627 2.1	- -	635 0.5	1757 1.4	2392 1.9	677 0.6	1488 1.2	2165 1.8	651 0.5	1202 1.0	1853 1.5	1357 1.1	1674 1.3	3031 2.4	4884 3.9	987 0.8	2485 2.4	2685 2.1	6158 5.3
$1919 1.6%	$2636 2.2%	- -	$748 0.6%	$1815 1.4%	$2355 2.0%	$866 0.8%	$1499 1.3%	$2165 1.9%	$548 0.4%	$ 985 0.8%	$1513 1.2%	$1485 1.3%	$1682 1.4%	$3149 2.7%	$4662 3.9%	$1327 1.1%	$2889 2.3%	$2524 2.1%	$6910 5.5%
1930 1.6	2815 2.2	- -	687 0.6	1948 1.3	2208 1.9	708 0.6	1507 1.3	2215 1.9	372 0.3	887 0.6	1089 0.9	1784 1.5	2001 1.7	3823 3.2	4882 4.1	1487 1.2	2402 2.0	2409 2.0	6298 5.2
2080 1.6	2827 2.2	- -	635 0.5	1522 1.2	2157 1.7	679 0.6	1517 1.2	2196 1.8	199 0.2	302 0.2	501 0.4	1781 1.4	2327 1.9	4448 3.8	4949 4.0	1293 1.0	2577 2.1	2083 2.1	6953 5.2
1321 1.5	2014 2.3		632 0.5	1434 1.1	2066 1.6	685 0.5	1492 1.2	2157 1.7	7 -	123 0.1	201 0.1	1713 1.4	2329 1.8	4662 3.7	4863 3.6	1200 0.9	2675 2.1	2757 2.2	6632 5.2
1835 1.4	2509 1.9	- -	621 0.5	1546 1.1	2167 1.6	689 0.5	1541 1.2	2230 1.7	52 -	66 0.1	118 0.1	1798 1.3	2684 1.9	4959 3.7	5077 3.8	1239 0.9	2752 2.1	2719 2.1	6710 5.1
1789 1.3	2448 1.7	- -	607 0.5	1546 1.1	2153 1.6	727 0.6	(#) 1674 1.2	2401 1.8	32 -	35 -	67 -	2220 1.6	2791 2.0	5743 4.2	5810 4.2	1351 1.0	3287 2.4	3070 2.3	7708 5.7

1956	JOY CANS KING-32 OZ.
OCT-NOV	NOT MKTD.
1956-57	
DEC-JAN	$ 2 -
FEB-MAR	68 -
APR-MAY	340 0.3%
JUN-JUL	926 0.9
AUG-SEP	599 0.5
OCT-NOV	832 0.8

(#) AUG-SEP 1956 SALES & SHARES REVISED, BASED ON THE PROJECTION CONTROLS AS USED IN OCT-NOV 1956.
(##) INCLUDES 14 OZ. AS OF OCT-NOV. 1957.

TREND TABLE 4 - SUPPLEMENTARY (SHEET 5 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT NORMAL COST TO CONSUMER

6901

6256

	LIGHT DUTY LIQUIDS																																			
	HD. LIQUID									LIGHT DUTY SOAPS																										
									IVORY SNOW				IVORY FLAKES				LUX FLAKES								ALL-OTHER											
1955-56	12 OZ.		28 OZ.		32 OZ.		TOTAL		GIANT		LARGE		TOTAL		GIANT		LARGE		TOTAL		ECONOMY		LARGE		SMALL		TOTAL		SYNTHETICS		LIQUIDS		SOAPS	
DEC-JAN									$1404	1.3%	$2873	2.5%	$4077	3.6%	$370	0.4%	$1348	1.3%	$1718	1.6%	$ 93	-	$ 967	0.9%	$ 12	-	$1072	0.9%	$3234	3.0%	$2888	2.7%	$3060	2.7%
FEB-MAR	$ 878	0.7%	$388	0.3%			$1094	1.0%	1488	1.4	2668	2.4	4158	3.8	371	0.3	1348	1.3	1716	1.6	98	-	934	0.9	10	-	1060	0.9	3332	3.1	2471	2.3	3084	2.9
APR-MAY	1025	0.9	300	0.3			1325	1.4	1486	1.2	2708	2.4	4176	3.6	402	0.4	1371	1.2	1776	1.6	93	0.1%	911	0.8	9	-	1013	0.9	3587	3.1	2397	2.0	3264	2.8
JUN-JUL	982	0.8	300	0.3			1482	1.3	1458	1.3	2608	2.2	4066	3.5	394	0.3	1378	1.2	1772	1.5	79	-	883	0.8	8	-	970	0.8	3581	3.0	2885	2.3	3267	2.7
AUG-SEP	1089	0.9	467	0.3			1788	1.4	1588	1.3	2887	2.1	4230	3.4	454	0.3	1410	1.2	1864	1.5	99	0.1	932	0.8	8	-	1039	0.9	3833	3.0	3134	2.6	1683	1.4
OCT-NOV	944	0.8	921	0.7	$ 16	-	1881	1.5	1687	1.4	2748	2.2	4427	3.6	457	0.4	1435	1.1	1892	1.5	107	0.1	1072	0.8	7	-	1186	0.9	4209	3.4	3648	2.8	1705	1.3
1956-57																																				
DEC-JAN	$871	0.7%	$830	0.7%	$128	0.1%	$1827	1.7%	$1693	1.4%	$2641	2.3%	$4354	3.7%	$469	0.3%	$1515	1.3%	$1984	1.6%	$ 80	-	$998	0.7%	6	0.1%	$ 982	0.8%	$4028	3.5%	$3734	3.1%	$1944	1.3%
FEB-MAR	1094	1.0	612	0.5	143	0.2	1929	1.7	1731	1.4	2683	2.3	4414	3.7	491	0.4	1501	1.3	1992	1.7	64	-	832	0.7	4	-	900	0.7	4321	3.7	4407	3.7	1584	1.3
APR-MAY	1188	0.9	725	0.6	178	0.2	2081	1.9	1709	1.4	2814	2.3	4603	3.7	478	0.4	1514	1.2	1987	1.6	58	-	860	0.7	4	-	922	0.7	4823	3.7	3829	2.9	1575	1.3
JUN-JUL	1010	0.8	921	0.7	188	0.2	2118	1.7	1660	1.3	2527	2.0	4187	3.3	459	0.3	1362	1.1	1821	1.4	55	-	843	0.7	5	-	903	0.7	4553	3.6	3782	3.0	1482	1.2
AUG-SEP	1228	0.9	927	0.7	199	0.2	2354	1.8	1687	1.2	2686	1.9	4173	3.1	442	0.3	1292	1.0	1734	1.3	52	-	792	0.6	3	-	847	0.6	4852	3.7	4366	3.3	1645	1.2
OCT-NOV	1403	1.0	844	0.6	271	0.2	2386	1.8	1822	1.4	2837	1.9	4459	3.3	435	0.3	1326	1.0	1761	1.3	43	-	817	0.6	4	-	864	0.6	5085	3.7	4888	3.7	1670	1.2

243X

Commission's Exhibit No. 626A-E
Nielsen Trend Table 5—package detergents

TREND TABLE 5 (SHEET 1 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM

UNIT BASIS (000)

1955-56	TOTAL ALL ITEMS	TIDE							CHEER					GLYDOL			
		10 LBS. 1 OZ.	KING SIZE	GIANT	LARGE	SMALL	TOTAL	KING 92 OZ.	GIANT	LARGE	SMALL	TOTAL	GIANT	LARGE	SMALL	TOTAL
DEC-JAN	245959 100%	110 0.1%	1423 0.6%	13573 6.4%	39407 16.0%	3830 1.5%	60548 24.6%		6114 2.5%	18906 7.7%	375 0.2%	25448 10.4%	1915 0.8%	5483 2.2%	93 -	7491 3.0%
FEB-MAR	244815 100	147 0.1	1827 0.7	14504 5.9	36978 15.2	3491 1.4	56947 23.3		5442 2.2	17248 7.1	371 0.1	23061 9.4	2746 1.1	7541 3.1	35 -	10322 4.2
APR-MAY	258478 100	127 0.1	1989 0.7	15245 5.9	39400 15.2	4233 1.7	60794 23.6	11 -	6091 2.3	17705 6.9	439 0.1	24246 9.3	2988 1.1	8675 3.4	38 -	11871 4.5
JUN-JUL	261422 100	137 0.1	2033 0.8	15534 5.9	40804 15.5	4705 1.8	63013 24.1	327 0.2%	5814 2.2	19058 7.3	431 0.1	25630 9.8	2999 1.2	8288 3.1	52 -	11339 4.3
AUG-SEP	262481 100	142 0.1	2060 1.0	15139 5.8	41305 15.7	4681 1.8	64127 24.4	767 0.3	5482 2.1	19724 7.5	457 0.2	26380 10.1	2972 1.1	8827 3.3	33 -	11832 4.4
OCT-NOV	264983 100	168 0.1	2060 1.0	16009 6.0	40897 15.2	3888 1.4	62938 23.7	798 .3	6039 2.3	18862 7.0	351 0.1	25548 9.7	3168 1.2	8572 3.2	18 -	11758 4.4
1956-57																
DEC-JAN	248462 100%	178 0.1%	2480 1.0%	14882 5.9%	38214 15.4%	3775 1.5%	59489 23.9%	849 0.4%	5884 2.3%	17944 7.2%	352 0.1%	24809 10.0%	2888 1.2%	7586 3.0%	17 -	10289 4.2%
FEB-MAR	247280 100	208 0.1	2615 1.0	15183 6.1	36282 14.6	3510 1.4	57578 23.2	787 0.4	5555 2.2	17130 6.9	307 0.1	23759 9.6	2803 1.1	6830 2.7	8 -	9274 3.8
APR-MAY	259247 100	210 0.1	2502 0.9	16219 6.3	37069 14.5	4098 1.6	60082 23.4	801 0.3	5650 2.2	18072 7.2	338 0.1	25461 9.8	3172 1.3	7823 3.0	5 -	11000 4.3
JUN-JUL	261221 100	224 0.1	2601 1.0	15499 6.3	37945 14.5	4394 1.7	61663 23.6	980 0.3	6480 2.5	18368 7.1	385 0.1	26211 10.0	3235 1.3	9089 3.1	7 -	11347 4.4
AUG-SEP	273088 100	235 0.1	3208 1.2	15150 5.5	43638 16.0	4521 1.6	66782 24.4	841 0.4	6476 2.3	19372 7.1	478 0.2	27767 10.0	3271 1.2	8411 3.1	15 -	11718 4.3
OCT-NOV	271544 100	282 0.1	2784 1.0	15778 5.8	38814 14.3	4174 1.6	61830 22.8	798 0.3	5887 2.1	18159 6.7	531 0.2	25375 9.3	2564 1.1	8739 3.2	30 -	12331 4.5

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8/26/63 Ace Reporting Co. Official Reporter

By ale

1956
OCT-NOV
1956-57
DEC-JAN
FEB-MAR
APR-MAY
JUN-JUL
AUG-SEP
OCT-NOV

TREND TABLE 5 (SHEET 1 OF 9)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM

UNIT BASIS (000)

HEAVY DUTY HIGH SUDSER SYNTHETICS

	CHEER						OXYDOL				FAB						RINSO BLUE			
TOTAL	KING 32 OZ.	GIANT	LARGE	SMALL	TOTAL	GIANT	LARGE	SMALL	TOTAL	16 LBS. 1 OZ.	KING SIZE	GIANT	LARGE	SMALL	TOTAL	GIANT	LARGE	TOTAL
60340 24.4%		6114 2.5%	18936 7.7%	375 0.2%	25465 10.4%	1915 0.8%	5483 2.2%	53 -	7451 3.0%		317 0.1%	4474 1.8%	15281 6.2%	940 0.4%	21029 8.5%	2479 1.0%	6695 2.8%	9174 3.8%
58967 23.3		5442 2.2	17248 7.1	371 0.1	23061 9.4	2746 1.1	7541 3.1	35 -	10322 4.2		489 0.1	3584 1.5	15838 6.4	868 0.4	20487 8.4	3291 1.3	5808 2.3	8099 3.4
60774 23.8	11 -	6091 2.3	17705 6.9	439 0.1	24246 9.3	2980 1.1	8675 3.4	36 -	11671 4.5	1 -	477 0.2	4397 1.7	13795 5.3	886 0.4	19470 7.6	2301 0.8	6292 2.4	8593 3.2
63013 24.1	327 0.2%	5814 2.2	18958 7.3	431 0.1	25630 9.8	2999 1.2	8288 3.1	52 -	11339 4.3	3 -	583 0.3	4357 1.6	13870 5.3	1031 0.4	19884 7.6	2298 0.9	7987 3.1	10287 4.0
64127 24.4	717 0.3	5482 2.1	19726 7.5	457 0.2	26380 10.1	2972 1.1	8627 3.3	33 -	11632 4.4	4 -	525 0.2	3900 1.5	13847 5.2	987 0.4	19263 7.3	2197 0.9	6915 2.7	9112 3.6
62939 23.7	798 .3	6039 2.3	18862 7.0	381 0.1	25848 9.7	3168 1.2	8572 3.2	16 -	11756 4.4	4 -	387 0.2	4040 1.5	13351 5.0	792 0.3	18854 7.0	3252 1.3	6042 2.2	9294 3.5
59489 23.9%	849 0.4%	5884 2.3%	17944 7.2%	352 0.1%	24809 10.0%	2888 1.2%	7306 3.0%	17 -	10209 4.2%	3 -	293 0.1%	3644 1.4%	11803 4.8%	743 0.3%	16286 6.6%	2299 1.0%	5829 2.3%	8128 3.3%
57570 23.2	787 0.4	5885 2.2	17130 6.9	307 0.1	23759 9.6	2833 1.1	6833 2.7	8 -	9274 3.8	2 -	289 0.1	3474 1.4	11679 4.7	699 0.3	16143 6.5	2227 0.9	5880 2.3	7888 3.2
60682 23.4	808 0.3	5850 2.2	18872 7.2	338 0.1	25461 9.8	3172 1.3	7823 3.0	5 -	11000 4.3	2 -	284 0.2	3748 1.4	12304 4.7	748 0.3	17084 6.6	2830 1.3	6080 2.4	8880 3.4
61663 23.4	880 0.3	6480 2.5	18366 7.1	485 0.1	26211 10.0	3235 1.3	5085 3.1	7 -	11347 4.4	2 -	276 0.1	3624 1.4	12334 4.7	742 0.3	17039 6.5	2439 1.0	6172 2.3	9676 3.3
66782 24.4	841 0.4	6476 2.3	19372 7.1	678 0.2	27167 10.0	3271 1.2	8411 3.1	15 -	11718 4.3	2 -	314 0.1	3295 1.2	13404 4.9	887 0.4	17872 6.6	2799 1.0	6381 2.3	9228 3.3
61836 22.8	798 0.3	5887 2.1	18139 6.7	531 0.2	25388 9.3	3564 1.3	8739 3.2	30 -	12351 4.5	2 -	448 0.2	3348 1.2	13412 5.0	1079 0.4	18289 6.8	2585 1.0	5971 2.2	8574 3.2

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8/26/53 — Dec Reporting Co. Official Reporter

By Ale

1956	BLUE BOT DUZ 20 OZ.	BLUE BOT DUZ 40,20 OZ.	BLUE BOT DUZ TOTAL	RINSO BLUE MEDIUM*	OXYDOL KING 83.75 OZ.
OCT-NOV	NOT MARKETED			NOT MKTD.	
1956-57					
DEC-JAN	297 0.1%	50 -	347 0.1%	- -	
FEB-MAR	1905 0.7	380 0.2%	2285 0.9	8 -	NOT MKTD.
APR-MAY	3110 1.2	703 0.2	3813 1.4	20 -	- -
JUN-JLY	3946 1.5	1007 0.4	4953 1.9	44 -	12 -
AUG-SEP	4136 1.5	1141 0.4	5277 1.9	48 -	21 -
OCT-NOV	3827 1.4	1137 0.4	4864 1.8	18 -	18 -

TROUD TABLE 9 (SHEET 2 OF 9)

PACKAGE DETERGENTS

CONSUMER SALES -- BY ITEM

UNIT BASIS (000)

HEAVY DUTY HIGH SUDSER SYNTHETICS

1956-58	BREEZE KING 67 OZ.	BREEZE GIANT	BREEZE LARGE	BREEZE TOTAL	SURF GIANT	SURF LARGE	SURF TOTAL	BLUE SILVER DUST: KING	BLUE SILVER DUST: GIANT	BLUE SILVER DUST: LARGE	BLUE SILVER DUST: TOTAL	FLUFFY GIANT 60,50 AND 61,50 OZ.	FLUFFY REGULAR 27 OZ.	FLUFFY TOTAL	20 LBS. 1 OZ.	10
DEC-JAN		1886 0.7%	5306 2.2%	7372 2.9%	1616 0.6%	4998 1.8%	6812 2.7%		833 0.4%	3126 1.2%	3959 1.6%	45 -	181 0.1%	226 0.1%	18 0.1%	2
FEB-MAR		1887 0.8	5388 2.2	7285 3.0	1362 0.6	4817 1.9	6179 2.5		873 0.4	3256 1.3	4129 1.7	23 -	151 0.1	178 0.1	38 -	3
APR-MAY	8 -	1888 0.7	5453 2.1	7391 2.8	1584 0.7	4872 1.9	6466 2.6		1166 0.4	3277 1.3	4443 1.7	8 -	79 -	87 -	54 0.1	5
JUN-JUL	25 -	1979 0.7	5457 2.1	7481 2.8	1883 0.7	3799 1.4	5682 2.1		1087 0.4	3550 1.3	4817 1.7	2 -	30 -	32 -	62 -	5
AUG-SEP	59 -	2259 0.8	5586 2.1	8037 2.9	1535 0.6	4673 1.8	6220 2.4	5 -	1065 0.4	3639 1.4	4709 1.8	1 -	42 -	43 -	78 0.1	6
OCT-NOV	101 0.1%	2101 0.8	5191 1.9	7303 2.8	1284 0.5	3908 1.5	5189 2.0	12 -	1172 0.5	3441 1.3	4625 1.8	- -	28 -	28 -	81 -	7
1956-57																
DEC-JAN	88 -	2118 0.8%	4847 1.9%	7053 2.8%	1811 0.7%	3011 1.3%	4822 2.0%	10 -	1234 0.5%	3229 1.3%	4473 1.8%	1 -	7 -	8 -	83 -	6
FEB-MAR	151 -	2248 0.9	4879 1.9	7078 2.8	1753 0.7	2734 1.1	4487 1.8	30 -	1297 0.6	3109 1.2	4436 1.8	- -	2 -	2 -	79 0.1%	6
APR-MAY	172 -	2257 0.9	4888 1.9	7317 2.8	1682 0.6	2901 1.1	4583 1.7	48 0.1%	1330 0.5	3314 1.2	4692 1.8	- -	1 -	1 -	100 -	7
JUN-JUL	235 0.1%	2279 0.9	4850 1.9	7394 2.9	1680 0.6	3102 1.2	4782 1.8	73 0.1	1301 0.4	3278 1.3	4652 1.8	NOT SEGREGATED			103 -	7
AUG-SEP	434 0.2	2263 0.9	5180 1.9	7857 3.0	1458 0.5	3089 1.1	4825 1.8	125 0.1	1475 0.5	3671 1.3	5271 1.9				103 0.1	7
OCT-NOV	380 0.1	2244 0.9	4843 1.8	7447 2.7	1498 0.6	3048 1.1	4640 1.7	111 -	1425 0.5	3439 1.3	4965 1.8				139 -	9

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TREND TABLE 5 (SHEET 2 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM

UNIT BASIS (000)

Issue 6901

6269

HEAVY DUTY HIGH SUDSER SYNTHETICS

SUDS																																	
BLUE SILVER DUST																																	
LARGE		TOTAL		KING		GIANT		LARGE		TOTAL		GIANT 66,30 AND 61,20 OZ.		REGULAR 27 OZ.		TOTAL		20 LBS. 1 OZ.		9 LBS. 13 OZ. - INCL. 10 LBS. AND 61,30 OZ.		25 OZ.		TOTAL		TOTAL DASH		25, 25, 50 AND 100 LBS.		20 LBS		10 LBS.		5 LBS.		24 OZ.		TOTAL	
4898	1.8%	6812	2.7%			833	0.4%	3128	1.2%	3959	1.6%	48	-	181	0.1%	226	0.1%	18	0.1%	219	-	1834	0.8%	2071	0.9%	2297	1.0%	211	0.1%	7	-	820	0.3%			2913	1.2%	3951	1.6%
4817	1.9	6179	2.5			873	0.4	3256	1.3	4129	1.7	25	-	151	0.1	176	0.1	30	-	351	0.2%	2809	1.1	3040	1.3	3225	1.4	287	-	4	-	787	0.4	1	-	2731	1.1	3739	1.5
4872	1.9	6486	2.6			1168	0.4	3277	1.3	4443	1.7	8	-	79	-	87	-	54	0.1	389	0.2	3670	1.4	4224	1.7	4311	1.7	181	-	5	-	820	0.4	-	-	3085	1.1	4089	1.5
3709	1.4	5862	2.1			1087	0.4	3588	1.3	4817	1.7	2	-	30	-	32	-	62	-	529	0.2	3989	1.5	4580	1.7	4612	1.7	188	0.1	1	-	844	0.3	-	-	2945	1.2	3978	1.6
4873	1.8	6228	2.4	5	-	1680	0.4	3439	1.4	4700	1.8	1	-	42	-	43	-	78	0.1	619	0.2	4134	1.6	4831	1.9	4874	1.9	196	0.1	1	-	818	0.3	-	-	2969	1.1	3982	1.5
3888	1.5	5188	2.0	12	-	1172	0.5	3441	1.3	4625	1.8	-	-	28	-	28	-	81	-	714	0.3	4101	1.5	4886	1.8	4884	1.8	282	0.1	-	-	915	0.4	-	-	3884	1.2	4911	1.7
3011	1.3%	4822	2.0%	10	-	1234	0.5%	3229	1.3%	4473	1.8%	1	-	7	-	8	-	80	-	639	0.2%	3823	1.5%	4540	1.8%	4553	1.8%	201	0.1%	-	-	829	0.4%	-	-	2828	1.1%	3858	1.6%
2734	1.1	4487	1.8	30	-	1297	0.6	3109	1.2	4436	1.8	-	-	2	-	2	-	79	0.1%	642	0.2	3671	1.5	4392	1.8	4394	1.8	206	0.1	-	-	820	0.4	-	-	2926	1.0	3952	1.5
2901	1.1	4583	1.7	48	0.1%	1330	0.5	3314	1.2	4692	1.8	-	-	1	-	1	-	100	-	780	0.3	3834	1.5	4716	1.8	4715	1.8	218	-	-	-	878	0.4	-	-	2671	1.0	3788	1.4
3182	1.2	4782	1.8	72	0.1	1301	0.4	3278	1.3	4652	1.8	NOT SEGREGATED						102	-	783	0.3	3847	1.5	4735	1.8			233	0.1	-	-	876	0.3	-	-	2831	1.1	3888	1.5
3069	1.1	4825	1.8	125	0.1	1475	0.5	3671	1.3	5271	1.9							103	0.1	777	0.3	3971	1.4	4851	1.8			256	0.1	-	-	934	0.4	-	-	2984	1.0	4054	1.5
3048	1.1	4540	1.7	111	-	1425	0.5	3439	1.3	4965	1.9							109	-	800	0.3	3877	1.5	4786	1.8			291	0.1	-	-	1037	0.3	-	-	3378	1.3	4998	1.7

(#) REPRESENTS 66,30 OZ. ONLY.

TABLE 3 (SHEET 3 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM

UNIT SALES (000)

Period Ending 10/31

1955-56	ALL PLASTIC 40 OZ.	ALL PLASTIC 19 OZ.	ALL PLASTIC TOTAL	TOTAL ALL	HEAVY DUTY LOW SUDSER SYNTHETICS ALL 20 LBS.	ALL 10 LBS. 1 OZ.	ALL 10 LBS.	ALL 83.75 OZ.	ALL 35 OZ.	ALL 29 OZ.	ALL 24 OZ.	ALL TOTAL	HEAVY DUTY LIQUIDS ALL 64 OZ.	ALL 32 OZ.	ALL 16 OZ.	ALL TOTAL
DEC-JAN	944 0.4%	983 0.4%	1927 0.8%	5918 2.4%			8 -		77 -	720 0.3%	2041 0.8%	2804 1.1%				
FEB-MAR	887 0.3	980 0.4	1867 0.7	5397 2.2			11 -	5 -	88 0.1%	731 0.3	1813 0.8	2644 1.2		449 0.2%	2281 0.9%	2730 1.1%
APR-MAY	942 0.4	1030 0.4	1972 0.8	6011 2.3		3 -	19 -	66 -	93 -	648 0.3	3782 1.5	4812 1.8		1665 0.6	4846 1.8	5131 2.0
JUN-JUL	1039 0.4	1062 0.4	2101 0.8	6077 2.4		5 -	18 -	104 0.1%	98 -	649 0.3	3117 1.2	3991 1.6	40 -	1887 0.7	4180 1.6	5827 2.3
AUG-SEP	1117 0.5	1075 0.4	2192 0.9	6174 2.4		6 -	15 -	96 -	105 0.1	731 0.2	2381 0.9	3334 1.2	180 0.1%	1878 0.7	2548 1.0	4618 1.8
OCT-NOV	1107 0.5	1109 0.4	2216 0.9	6727 2.6		9 -	11 -	78 -	118 0.1	708 0.2	1987 0.8	2917 1.1	234 0.1	2884 0.8	3888 1.1	5884 2.0
1956-57																
DEC-JAN	1008 0.4%	959 0.4%	2015 0.8%	5885 2.4%	1 -	7 -	11 -	81 -	91 0.1%	774 0.3%	1588 0.6%	2515 1.0%	178 0.1%	1383 0.5%	1934 0.8%	3675 1.4%
FEB-MAR	970 0.4	886 0.3	1856 0.7	5416 2.2	1 -	7 -	60 0.1%	68 -	80 -	771 0.3	1484 0.6	2401 1.0	248 0.1	2026 0.8	3347 1.4	5621 2.3
APR-MAY	1051 0.4	922 0.4	1973 0.8	5738 2.2	- -	6 -	130 -	41 -	84 0.1	750 0.3	1587 0.6	2598 1.0	287 0.1	2002 0.8	3236 1.2	5827 2.1
JUN-JUL	1075 0.4	973 0.4	2048 0.8	5986 2.3	1 -	5 -	151 0.1	21 -	67 -	739 0.3	1518 0.6	2425 1.0	443 0.2	2690 1.0	4300 1.7	7438 2.9
AUG-SEP	1133 0.5	972 0.3	2105 0.8	6259 2.3	- -	4 -	137 0.1	30 -	66 -	734 0.3	1527 0.5	2469 .9	525 0.2	2666 1.0	3878 1.4	7184 2.6
OCT-NOV	1224 .4	1154 .5	2378 .9	7074 2.6	2 -	3 -	160 -	36 0.1%	67 -	770 0.3	1577 0.5	2869 .9	708 0.3	3275 1.2	4430 1.7	8452 3.2

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1957	WISK 128 OZ.
FEB-MAR	NOT RPTD.
APR-MAY	- -
JUN-JUL	
AUG-SEP	
OCT-NOV	

TODD TABLE 5 (SHEET 3 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM

UNIT BASIS (000)

Period No. 1964 ... Cities No. 1626

HEAVY DUTY LOW SUDSER SYNTHETICS																							
20 LBS.	10 LBS. 1 OZ.	10 LBS.	53.75 OZ.	32 OZ.	28 OZ.	24 OZ.	TOTAL	64 OZ.	32 OZ.	16 OZ.	TOTAL	GIANT	LARGE	SMALL	TOTAL	GIANT	LARGE	SMALL	TOTAL
		8 -		77 -	708 0.3%	2841 0.8%	3884 1.1%					1848 0.7%	5917 2.5%	414 0.1%	8171 3.3%	477 0.2%	2473 1.0%	288 0.1%	3238 1.3%
		11 -	5 -	84 0.1%	731 0.3	1813 0.8	2648 1.2		449 0.2%	2281 0.9%	2730 1.1%	1518 0.6	5811 2.3	388 0.2	7487 3.1	486 0.2	2090 0.8	201 0.1	2777 1.1
3 -		19 -	66 -	93 -	648 0.3	3783 1.5	4612 1.8		1885 0.4	4946 1.8	5131 2.8	1437 0.6	5836 2.1	287 0.2	7388 2.9	387 0.1	2782 1.0	289 0.1	3348 1.2
5 -		18 -	104 0.1%	98 -	649 0.3	3117 1.2	3991 1.6	40 -	1887 0.7	4180 1.8	5827 2.3	1588 0.6	5881 2.1	229 0.1	7297 2.8	378 0.1	2329 1.0	271 0.1	3178 1.2
6 -		15 -	96 -	185 0.1	731 0.2	2381 0.9	3334 1.2	180 0.1%	1870 0.7	2548 1.0	4618 1.8	1546 0.6	5333 2.0	289 0.2	7168 2.8	387 0.1	2434 0.9	236 0.1	3057 1.1
9 -		11 -	78 -	118 0.1	786 0.2	1987 0.8	2917 1.1	234 0.1	2884 0.8	3886 1.1	5884 2.0	1378 0.6	4888 1.8	288 0.1	6472 2.5	388 0.2	2596 0.9	184 0.1	3888 1.2
1 -	7 -	11 -	81 -	91 0.1%	776 0.3%	1988 0.8%	2815 1.0%	178 0.1%	1363 0.5%	1934 0.8%	3475 1.4%	1488 0.8%	4870 1.8%	197 0.1%	6388 2.5%	388 0.1%	1886 0.8%	138 -	2386 0.9%
1 -	7 -	80 0.1%	88 -	80 -	771 0.3	1484 0.8	2481 1.0	248 0.1%	2026 0.8	3947 1.4	5821 2.3	1373 0.5	4881 1.8	202 0.1	6486 2.4	384 0.1	1880 0.8	78 -	1900 0.7
- -	6 -	130 -	41 -	84 0.1	750 0.3	1887 0.6	2598 1.0	287 0.1	2002 0.8	3236 1.2	5827 2.1	1404 0.8	4811 1.7	278 0.1	6189 2.4	384 0.2	1379 0.5	84 0.1%	1767 0.8
1 -	5 -	151 0.1	21 -	67 -	739 0.3	1618 0.6	2425 1.0	443 0.2	2880 1.0	4300 1.7	7638 2.9	1273 0.4	4290 1.7	272 0.1	5797 2.2	296 0.1	1371 0.5	78 -	1745 0.6
- -	4 -	137 0.1	30 -	66 -	734 0.3	1527 0.5	2388 0.9	525 0.2	2686 1.0	3878 1.4	7184 2.6	1332 0.5	3863 1.5	275 0.1	5870 2.1	274 0.1	1481 0.5	78 -	1833 0.6
2 -	3 -	160 -	30 0.1%	67 -	770 0.3	1577 0.5	2469 0.9	724 0.3	3275 1.2	4430 1.7	8452 3.2	1218 0.4	3567 1.3	234 0.1	4997 1.8	245 0.1	1311 0.5	64 -	1620 0.6

1957	WISK 128 OZ.	WISK 22 OZ.
FEB-MAR	NOT RKTD.	
APR-MAY	- -	
JUN-JUL		NOT RKTD.
AUG-SEP		17 -

TREND TABLE 5 (SHEET 4 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM

UNIT BASIS (000)

	HEAVY DUTY SOAPS									LIGHT DUTY SYNTHETICS								
	HEAVY DUTY FLAKE		SILVER DUST SOAP				DREFT			VEL			TIDE					
1955-56	NEPTUNE ALL SIZES	RINSO 65 OZ.	GIANT	LARGE	TOTAL		GIANT	LARGE	TOTAL	65 OZ.	GIANT	LARGE	TOTAL	33, 36, AND 37.00 OZ.	12.25 OZ.	TOTAL		GIANT
DEC-JAN			173 -	497 0.2%	630 0.2%		1121 0.5%	7299 2.9%	8401 3.4%		1119 0.5%	6632 2.7%	7781 3.2%	983 0.4%	4805 1.9%	5788 2.3%		
FEB-MAR			85 -	208 0.1	293 0.1		982 0.4	6758 2.7	7740 3.1		1044 0.4	5687 2.4	6731 2.8	898 0.3	4733 2.0	5631 2.3		1839 0.7%
APR-MAY			37 -	100 -	137 -		941 0.3	6636 2.8	7577 2.9		939 0.3	5775 2.3	6714 2.6	880 0.3	4685 1.8	5565 2.1		1615 0.5
JUN-JUL			30 -	55 -	85 -		999 0.4	6240 2.4	7149 2.8		874 0.3	5207 2.0	6081 2.3	798 0.3	4804 1.8	5602 2.1		929 0.4
AUG-SEP	3843 1.4%		23 -	56 0.1	79 0.1		988 0.3	6306 2.4	7294 2.7		848 0.4	5407 2.0	6255 2.4	797 0.3	4735 1.8	5532 2.1		980 0.3
OCT-NOV	4213 1.6		28 -	38 -	56 -		941 0.3	5804 2.2	6788 2.5		804 0.3	5809 2.0	6813 2.5	902 0.4	4801 1.7	5888 2.1		804 0.3
1956-57																		
DEC-JAN	3850 1.4%		19 -	19 -	38 -		934 0.4%	5849 2.3%	6783 2.7%		988 0.4%	4939 2.0%	5899 2.4%	888 0.4%	4884 1.8%	5572 2.3%		720 0.2%
FEB-MAR	3848 1.4		18 -	28 -	48 -		898 0.4	5880 2.4	6778 2.8		853 0.3	4712 1.9	5568 2.2	944 0.4	4791 1.9	5888 2.3		488 0.2
APR-MAY	3858 1.5		16 -	20 -	36 -		1009 0.4	6237 2.4	7246 2.8		823 0.3	4629 1.8	5468 2.1	935 0.4	4781 1.8	5846 2.2		259 0.1
JUN-JUL	3782 1.5	NOV	SEGREGATED				857 0.3	5602 2.1	6465 2.4		813 0.4	4351 1.6	5184 2.0	914 0.4	4830 1.7	5844 2.1		182 0.1
AUG-SEP	3888 1.5						857 0.3	5524 2.0	6391 2.3		755 0.3	4889 1.7	5686 2.0	882 0.3	4815 1.8	5787 2.0		66 -
OCT-NOV	3857 1.4						824 0.3	5253 2.0	6084 2.3		762 0.2	4572 1.7	5334 1.9	970 0.4	4900 1.8	6170 2.3		41 -

(NOV) INCLUDES 14 OZ. AS OF OCT-NOV. 1957.

TREND TABLE 3 (SHEET 4 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM

UNIT BASIS (000)

Table No. 6961

Pg. 6260

SWEPT		LIGHT DUTY SYNTHETICS					TREND			LIGHT DUTY LIQUIDS												
		VEL								JOY								LUX LIQUID				
										BOTTLES			CANS			TOTAL						
LARGE	TOTAL	66 OZ.	GIANT	LARGE	TOTAL	32, 38, AND 37.30 OZ.	12.25 OZ.	TOTAL	GIANT	LARGE	TOTAL	GIANT	LARGE	TOTAL	JOY	32 OZ.	22 OZ.	12 OZ.	TOTAL			
7288 2.9%	8401 3.4%		1119 0.5%	6832 2.7%	7781 3.2%	903 0.4%	4885 1.9%	5788 2.3%							8829 3.6%	188 0.1%	3856 1.6%	8303 2.7%	10344 4.2%			
6758 2.7	7740 3.1		1044 0.4	5687 2.4	6731 2.8	898 0.3	4733 2.0	5631 2.3	1839 0.7%	7534 3.1%	9373 3.8%	31 -	85 -	96 -	9469 3.8	888 0.3	3485 1.4	6848 2.8	10883 4.5			
6636 2.8	7577 2.9		939 0.3	5775 2.3	6714 2.6	880 0.3	4680 1.8	5560 2.1	1415 0.5	5608 2.1	6823 2.6	639 0.2%	1813 0.7%	2252 0.9%	9075 3.5	852 0.3	3895 1.1	8841 3.1	11088 4.3			
6240 2.4	7149 2.8		874 0.3	5207 2.0	6081 2.3	798 0.3	4854 1.8	5652 2.1	929 0.4	3815 1.4	4744 1.8	1278 0.5	3050 1.3	4328 1.8	9072 3.8	885 0.3	3422 1.3	8395 2.5	10882 4.1			
6338 2.4	7294 2.7		848 0.4	5487 2.0	6238 2.4	797 0.3	4735 1.8	5832 2.1	903 0.3	3747 1.5	4650 1.8	1435 0.6	3519 1.3	4974 1.9	9824 3.7	885 0.3	3912 1.5	9882 2.3	10819 4.1			
5884 2.2	6788 2.5		884 0.3	5888 2.0	6813 2.3	902 0.4	4881 1.7	5883 2.1	884 0.3	3847 1.4	4811 1.7	1981 0.7	4311 1.6	6832 2.3	10788 4.0	1881 0.4	4878 1.7	6788 2.5	12882 4.6			
5949 2.3%	6783 2.7%		988 0.4%	4939 2.0%	5899 2.4%	888 0.4%	4884 1.9%	5872 2.3%	723 0.2%	2904 1.2%	3627 1.4%	2113 0.8%	4323 1.7%	6438 2.6%	10088 4.0%	1348 0.5%	3833 1.6%	6443 2.6%	11882 4.7%			
5883 2.4	6778 2.8		883 0.3	4712 1.9	5868 2.2	944 0.4	4711 1.9	5888 2.3	488 0.2	2088 0.8	2548 1.0	3823 1.0	5138 2.1	7827 3.2	10878 4.2	1444 0.5	3488 1.4	8138 2.5	11884 4.6			
6237 2.4	7848 2.8		823 0.3	4629 1.8	5448 2.1	905 0.4	4741 1.8	5846 2.2	258 0.1	885 0.3	1143 0.4	2572 1.0	5913 2.2	8880 3.4	9972 3.8	1307 0.5	3776 1.5	6888 2.8	11881 4.8			
5682 2.1	6485 2.4		813 0.4	4351 1.8	5184 2.0	914 0.4	4830 1.7	5844 2.1	182 0.1	384 0.1	458 0.2	2488 1.0	5898 2.2	8888 3.4	9444 3.8	1218 0.5	3884 1.5	6988 2.7	12878 4.7			
5524 2.0	6391 2.3		795 0.3	4889 1.7	5484 2.0	882 0.3	4815 1.8	5787 2.1	84 -	198 0.1	236 0.1	2573 0.9	6288 2.3	9487 3.5	9743 3.6	1252 0.4	3947 1.5	6889 2.5	12888 4.4			
5253 2.0	6084 2.3		782 0.2	4572 1.7	5334 1.9	970 0.4	4885 1.9	6170 2.3	41 -	102 -	143 -	3099 1.1	6734 2.5	10880 4.0	10803 4.0	1345 0.5	4631 1.7	7382 2.8	13358 5.0			

1989	JOY CANS 6988-32 OZ.
OCT-NOV	NOT INTRO.
1988-87	
DEC-JAN	2 -
FEB-MAR	68 0.1%
APR-MAY	348 0.2
JUN-JUL	684 0.2
AUG-SEP	788 0.3
OCT-NOV	827 0.4

(AV) INCLUDES 14 OZ. AS OF OCT-NOV, 1987.

D-10

FEDERAL TRADE COMMISSION
Docket No. 6401 Commission's Exhibit No. 6266

TREND TABLE 2 (SHEET 5 OF 5)

PACKAGE DETERGENTS

CONSUMER SALES - BY ITEM

UNIT BASIS (000)

	LIGHT DUTY LIQUIDS				LIGHT DUTY SOAPS															
	HVL LIQUID				IVORY SNOW				IVORY FLAKES				LUX FLAKES				ALL-OTHER			
1955-56	12 OZ.	22 OZ.	32 OZ.	TOTAL	GIANT	LARGE	TOTAL		GIANT	LARGE	TOTAL		ECONOMY	LARGE	SMALL	TOTAL	SYNTHETICS	LIQUIDS	SOAPS	
DEC-JAN					1809 0.8%	8339 3.4%	10150 4.2%		488 0.2%	4190 1.7%	4680 1.9%		139 0.1%	3044 1.2%	84 -	3267 1.3%	7774 3.2%	7115 2.9%	7843 3.2%	
FEB-MAR	1782 0.7%	988 0.3%		2882 0.9%	1909 0.8	8270 3.4	10259 4.2		488 0.2	4185 1.7	4635 1.9		137 0.1	2998 1.2	71 -	3106 1.3	8024 3.3	6384 2.6	7429 3.0	
APR-MAY	2888 1.0	719 0.3		3327 1.3	1902 0.8	8300 3.2	10322 4.0		530 0.2	4224 1.6	4754 1.8		129 0.1	2823 1.1	66 0.1%	3018 1.3	8848 3.4	6182 2.4	7730 3.0	
JUN-JUL	2481 0.9	721 0.3		3182 1.2	1882 0.7	7888 3.0	9760 3.7		510 0.2	4190 1.6	4700 1.8		107 0.1	2878 1.0	57 -	2940 1.1	8816 3.4	6674 2.5	7786 3.0	
AUG-SEP	2891 1.0	888 0.3	NOT METD.	3888 1.3	1857 0.7	7778 3.-	9635 3.7		513 0.1	4074 1.6	4587 1.7		117 -	2881 1.0	57 -	2825 1.0	8819 3.5	7267 2.9	3888 1.3	
OCT-NOV	3414 0.9	1386 0.5	16 -	3786 1.4	2148 .8	8174 3.1	10823 3.9		588 0.2	4388 1.6	4966 1.8		140 -	3158 1.2	48 -	3386 1.2	9892 3.8	6882 3.2	3788 1.5	
1956-57																				
DEC-JAN	3488 1.4%	1288 0.5%	128 -	3888 1.5%	2138 0.8%	7882 3.2%	10072 4.0%		597 0.2%	4488 1.8%	5082 2.1%		102 0.1%	2878 1.1%	42 -	3022 1.2%	9818 3.7%	9228 3.7%	3441 1.4%	
FEB-MAR	2887 1.1	1888 0.4	148 0.1%	3882 1.8	2158 0.9	7988 3.2	10178 4.1		622 0.3	4481 1.8	5888 2.1		82 -	2878 1.0	28 -	2988 1.0	9988 4.0	10881 4.3	3412 1.4	
APR-MAY	2882 1.1	1848 0.4	178 0.1	4188 1.8	2287 0.9	8882 3.2	10819 4.1		587 0.3	4478 1.7	5872 2.0		74 -	2388 1.0	31 -	2880 1.0	10887 4.0	8884 3.5	3488 1.3	
JUN-JUL	2578 1.0	1288 0.5	188 -	4884 1.5	2888 0.8	2878 2.9	9574 3.7		577 0.2	4818 1.8	4888 1.8		78 -	2488 0.9	31 -	2594 0.9	10486 4.0	9172 3.5	3282 1.3	
AUG-SEP	3128 1.1	1284 0.5	281 0.1	4883 1.7	2119 0.7	7295 2.7	9414 3.4		558 0.2	3787 1.4	4338 1.6		66 -	2325 0.9	21 -	2412 0.9	11085 3.9	10808 3.9	3407 1.4	
OCT-NOV	3888 1.3	1158 0.4	277 0.1	4888 1.8	2238 0.8	7888 2.8	9888 3.6		532 0.2	3794 1.4	4328 1.6		53 -	2242 0.9	30 -	2425 0.9	11354 4.2	11800 4.3	3301 1.2	

TABLE 3 - BIMONTHLY SHAMPOO SALES IN DRUG AND GROCERY STORES COMBINED **

-COST PRICE TO CONSUMER - DOLLARS-

Commission's Exhibit No. 628A-D
Nielsen Table 3 etc. on shampoos

	TOTAL SHAMPOOS	LIQUID FREAL		DRENE			HALO		BREEZE		TONI WHITE GLO		PRELL		SHASTA		LUSTRE CREME		ENDEN		ALL OTHERS	
1955	$000	$000	% OF TOTAL	$000	% OF TOTAL	% OF HALO	$000	% OF TOTAL	$000	% OF TOTAL	$000	% OF TOTAL	$000	% OF TOTAL	$000	% OF TOTAL	$000	% OF TOTAL	$000	% OF TOTAL	$000	% OF TOTAL
DEC-JAN-FEB	14378	132	0.8	977	6.8	42.6	2291	15.9	1822	12.7	1096	7.6	1092	7.6	410	2.9	1618	11.2			4973	34.5
FEB-MARCH-APRIL	15613	635	4.1	987	6.3	41.1	2956	15.3	1904	12.4	1083	7.0	1108	7.2	373	2.4	1726	11.2			5280	34.1
APRIL-MAY-JUNE	16581	1082	6.6	1397	8.3	42.8	2421	14.7	1985	11.3	1384	8.6	1005	6.1	368	2.2	2089	12.8			5851	35.8
JUN-JULY-AUG	19488	1152	8.9	1122	8.1	41.8	2644	14.7	1883	11.3	1382	8.5	963	5.6	397	2.4	1912	11.5			6088	36.2
AUG-SEP-OCT	16752	1224	7.3	989	5.8	40.1	2421	14.4	1970	11.8	1051	6.3	844	5.1	411	2.5	1764	10.4			5749	34.6
OCT-NOV-DEC	15696	1158	7.4	999	6.1	42.4	2261	14.4	1918	12.2	919	5.9	823	5.2	342	2.2	1568	10.0				
	9434																					
1956																						
DEC-JAN-FEB	15761	1220	7.8	972	6.2	43.5	2733	14.2	1959	12.4	942	6.0	913	5.8	323	2.0	1586	10.0			5607	35.6
FEB-MARCH-APRIL	16827	1206	7.2	1014	6.1	43.2	2359	14.0	2021	12.0	1122	6.7	964	5.8	332	2.0	1575	9.9			7079	42.0
APR-MAY-JUNE	17798	1341	7.5	1376	8.0	43.8	2520	14.2	2089	11.8	[illegible]	[illegible]	925	5.2	375	2.1	1885	11.2			7585	42.4
JUNE-JULY-AUG	17963	1618	8.9	1324	5.7	39.7	2581	14.4	2138	11.8	[illegible]	[illegible]	925	5.2	327	1.8	1917	10.7			8059	44.9
AUG-SEP-OCT	19177	1679	8.1	1308	5.5	39.8	2529	13..	2134	11.7	[illegible]	[illegible]	885	4.8	287	1.6	1721	9.5			7835	43.2
OCT-NOV-DEC	16895	1472	8.4	952	5.8	42.7	2329	13..	2384	12.2	[illegible]	[illegible]	811	4.8	267	1.6	1515	9.0				
1956-1957																						
DEC-JAN-FEB	16886	1419	8.4	1015	6.0	46.3	2191	13.0	2096	12.4	[illegible]	[illegible]	802	4.7	255	1.5	1462	8.7			7855	45.3
FEB-MARCH-APRIL	17425	1571	8.7	995	5.5	42.4	2254	12.9	2154	12.4	[illegible]	[illegible]	879	5.0	245	1.4	1441	8.3			7978	45.8
APRIL-MAY-JUNE	19327	1615	8.4	987	5.1	42.1	2346	12.1	2217	11.5	[illegible]	[illegible]	853	4.4	217	1.1	1669	8.6	1126	5.7	8323	43.1
JUNE-JULY-AUG	19157	1662	8.7	992	5.2	41.0	2336	12.2	2191	11.4	1055	5.5	831	4.3	211	1.1	1858	9.7	922	4.8	7135	37.3
AUG-SEP-OCT	13149	1772	9.2	909	4.7	39.5	2303	12.0	2295	11.9	1086	5.6	844	4.4	[illegible]	[illegible]	1623	8.5	1097	5.7	7208	38.0
OCT-NOV-DEC	16130	1454	9.1	850	4.7	40.9	2043	11.8	2246	12.4	992	5.5	750	4.1	[illegible]	[illegible]	1394	7.7	1512	8.3	6639	36.6

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Procter & Gamble Co

WITNESS

2/26/58 Acme Reporting Co Official Reporter

By Ala

J-3

6901 6280

TREND TABLE 5

SHAMPOOS

CONSUMER SALES - BY ITEM

UNIT BASIS (000)

1955	TOTAL ALL ITEMS	DREME NEW	DREME REGULAR	DREME TOTAL	LIQUID PRELL ALL SIZES	HALO ALL SIZES	BRECK ALL SIZES	TONI PAMPER ALL SIZES	TONI WHITE RAIN ALL SIZES	LUSTRE CREME ALL SIZES	PRELL ALL SIZES	SHASTA ALL SIZES	ALL-OTHER SHAMPOOS ALL TYPES
JUL-AUG	10097 100%		499 4.9%		541 5.4%	1313 13.0%	1028 10.2%	248 2.5%	516 5.1%	700 7.0%	466 4.6%	243 2.4%	4841 44.9%
SEP-OCT	9365 100		493 5.3		500 5.3	1127 12.0	1001 10.7	227 2.5	472 5.0	631 6.8	407 4.3	227 2.5	4270 45.6
NOV-DEC	8802 100	NOT MEYD.	484 5.5		483 5.4	1059 12.0	1004 11.4	242 2.8	413 4.7	570 6.5	379 4.3	189 2.2	3979 45.2
1956													
JAN-FEB	8834 100%	29 0.3%	456 5.2%	485 5.5%	475 5.4%	1026 11.6%	1019 11.5%	NOT REG.	475 5.4%	583 6.6%	510 5.7%	184 2.1%	4077 46.2%
MAR-APR	9369 100	117 1.2	378 4.1	495 5.3	503 5.4	1082 11.2	1038 11.1		521 5.6	621 6.6	486 5.2	197 2.1	4448 47.5

257X

J-4

TREND TABLE 2

SHAMPOOS

CONSUMER SALES - BY ITEM

UNIT BASIS (000)

YEAR	TOTAL ALL ITEMS	BRECK ALL SIZES	TURK FRELL ALL SIZES	LIQUID FRELL ALL SIZES	SHASTA ALL SIZES	HALO ALL SIZES	BRECK ALL SIZES	LUSTRE CREME ALL SIZES	ALL-OTHER SHAMPOOS ALL TYPES
MAY-JUN	9882 100%	484 5.1%	468 4.8%	559 5.8%	190 2.0%	1082 11.0%	1083 11.1%	719 7.6%	5882 59.6%
JUL-AUG	9468 100	480 5.1	481 5.0	564 6.0	172 1.8	1040 11.0	1056 11.1	650 6.9	5023 53.1
SEP-OCT	9312 100	424 4.6	412 4.4	537 5.8	150 1.6	980 10.5	1033 11.1	583 6.1	5213 55.9
NOV-DEC	8608 100	484 5.6	359 4.2	505 5.9	148 1.7	880 10.2	962 11.4	496 5.8	4754 55.2

259X

L-3

TREND TABLE 5

SHAMPOOS

CONSUMER SALES - BY ITEM

UNIT BASIS (000)

1956	TOTAL ALL ITEMS	DRENE ALL SIZES	TUBE PRELL ALL SIZES	LIQUID PRELL ALL SIZES	SHASTA ALL SIZES	HALO ALL SIZES	BREEK ALL SIZES	LUSTRE CREME ALL SIZES	ALL OTHER SHAMPOOS ALL TYPES
MAY-JUN	9562 100%	484 5.1%	463 4.8%	558 5.8%	190 2.0%	1052 11.0%	1063 11.1%	719 7.5%	5032 52.6%
JUL-AUG	9468 100	480 5.1	481 5.0	564 6.0	172 1.8	1040 11.0	1056 11.1	650 6.9	5025 53.1
SEP-OCT	9312 100	424 4.6	412 4.4	537 5.8	150 1.6	980 10.5	1033 11.1	563 6.1	5213 55.9
NOV-DEC	8600 100	484 5.6	359 4.2	505 5.9	148 1.7	880 10.2	982 11.4	496 5.8	4754 55.2
1957									
JAN-FEB	8774 100%	508 5.7%	424 4.9%	520 6.0%	135 1.5%	859 9.8%	978 11.1%	488 5.6%	4865 55.4%
MAR APR	9235 100	455 4.9	456 5.0	569 6.2	127 1.3	927 10.1	1022 11.1	521 5.6	5158 55.8
MAY-JUN	9066 100	405 4.9	403 4.4	561 5.7	120 1.2	917 9.3	982 10.0	603 6.1	5700 58.4
JUL-AUG	9385 100	460 4.9	446 4.7	585 6.3	118 1.2	939 10.0	1012 10.8	585 6.2	4751 50.7
SEP-OCT	9380 100	414 4.4	423 4.5	572 6.1	NOT SEG.	861 9.2	998 10.6	511 5.5	4656 49.6
NOV-DEC	8623 100	402 4.7	361 4.1	558 6.5		781 9.1	964 11.1	463 5.4	4019 46.6

261X

1957	WHITL RAIN ALL TYPES AND SIZES	ENDEN ALL SIZES
MAY-JUN	NOT SEG.	
JUL-AUG	489 5.2%	NOT SEG.
SEP-OCT	427 4.6	518 5.5%
NOV-DEC	411 4.8	664 7.7

M-1

Commission's Exhibit No. 629 C
Nielsen Trend Table 4—shampoos

TREND TABLE 4

SHAMPOOS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

1956	TOTAL ALL ITEMS	DRENE ALL SIZES	TUBE PRELL ALL SIZES	LIQUID PRELL ALL SIZES	SHASTA ALL SIZES	HALO ALL SIZES	BREEK ALL SIZES	LUSTRE CREME ALL SIZES	ALL-OTHER SHAMPOOS ALL TYPES
APR-MAY	$11080 100%	$ 801 7.2%	$ 634 5.8%	$1017 9.1%	$ 263 2.4%	$1986 17.9%	$1104 10.0%	$1271 11.5%	$4004 36.1%
JUN-JUL	11389 100	750 6.6	617 5.4	1112 9.8	225 1.9	2024 17.8	1124 9.9	1327 11.6	4210 37.0
AUG-SEP	11484 100	781 6.8	586 5.1	1154 10.1	194 1.7	2006 17.5	1169 10.2	1201 10.4	4393 38.4
OCT-NOV	10860 100	709 6.7	564 5.3	1105 10.3	174 1.7	1763 16.5	1153 10.8	1081 10.0	4131 38.7
1956-57									
DEC JAN	$10450 100%	$768 7.3%	$539 5.2%	$1082 10.4%	$170 1.6%	$1711 16.4%	$1174 11.2%	$1024 9.8%	$3982 38.1%
FEB-MAR	10680 100	723 6.8	605 5.7	1159 11.0	165 1.5	1733 16.4	1186 11.2	979 9.2	4080 38.2
APR-MAY	11835 100	737 6.2	574 4.8	1261 10.7	138 1.2	1839 15.5	1271 10.8	1093 9.2	4822 41.6
JUN-JUL	12230 100	729 6.0	551 4.5	1273 10.4	137 1.1	1822 14.9	1242 10.2	1305 10.7	4413 36.0
AUG-SEP	12174 100	697 5.7	553 4.5	1397 11.5	NOT SEG.	1823 15.0	1344 11.1	1129 9.3	4028 33.1
OCT-NOV	11510 100	642 5.6	505 4.4	1299 11.3		1657 14.4	1327 11.5	960 8.4	3708 32.2

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6 of C

1957	WHITE RAIN ALL TYPES & SIZES	EDEN ALL TYPES AND SIZES
APR-MAY	NOT SEG.	
JUN-JUL	$758 6.2%	NOT SEG.
AUG-SEP	798 6.3	$405 3.3%
OCT-NOV	736 6.4	678 5.8

Commission's Exhibit No. 631A-C
Nielsen Trend. Table 4—shampoos

TREND TABLE 4

SHAMPOOS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

1955	TOTAL ALL ITEMS	DREENE NEW	DREENE REGULAR	DREENE TOTAL	LIQUID PRELL ALL SIZES	HALO ALL SIZES	BRECK ALL SIZES	TONI PAMPER ALL SIZES	TONI WHITE RAIN ALL SIZES	LUSTRE CREME ALL SIZES	PRELL ALL SIZES	SHASTA ALL SIZES	ALL OTHER SHAMPOOS ALL TYPES
JUL-AUG	$6419 100%		$270 4.3%		$313 4.9%	$382 6.0%	$948 14.7%	$142 2.2%	$329 5.2%	$648 10.1%	$310 4.8%	$132 2.0%	$2773 43.2
SEP-OCT	6226 100		270 4.3		295 4.8	508 8.0	935 15.1	132 2.1	306 4.9	574 9.3	278 4.4	129 2.0	2809 45.1
NOV-DEC	5910 100	NOT MKTD.	251 4.2		287 4.8	479 8.1	935 15.9	141 2.4	262 4.4	506 8.6	254 4.3	102 1.7	2693 45.6
1956													
JAN-FEB	$6007 100%	$ 18 0.3%	$236 3.9%	$254 4.2%	$280 4.7%	$469 7.8%	$945 15.7%	NOT SEG.	$314 5.3%	$517 8.6%	$300 5.0%	$104 1.7%	$2824 47.0
MAR-APR	6449 100	73 1.1	194 3.0	267 4.1	295 4.6	502 7.8	958 14.9		343 5.3	570 8.8	294 4.5	114 1.8	3108 48.2

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Procter & Gamble

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TREND TABLE 4

SHAMPOOS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

1958	TOTAL ALL ITEMS		DREME ALL SIZES		TUBE PRELL ALL SIZES		LIQUID PRELL ALL SIZES		SHASTA ALL SIZES		HALO ALL SIZES		BRECK ALL SIZES		LUSTRE CREME ALL SIZES		ALL-OTHER SHAMPOOS ALL TYPES	
MAY-JUN	$6708	100%	$273	4.1%	$291	4.3%	$324	4.8%	$112	1.7%	$534	8.0%	$ 985	14.6%	$713	10.7%	$3476	51.8%
JUL-AUG	6514	100	273	4.2	308	4.7	326	5.0	103	1.6	557	8.6	982	15.0	590	9.1	3375	51.8
SEP-OCT	6713	100	245	3.7	279	4.1	322	4.8	93	1.4	523	7.8	965	14.4	520	7.7	3766	56.1
NOV-DEC	6235	100	243	3.9	247	3.9	317	5.1	93	1.5	467	7.5	910	14.6	454	7.3	3504	56.2

267X

631B

TREND TABLE 4

SHAMPOOS

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

1956	TOTAL ALL ITEMS	CREME ALL SIZES	TUBE PHELL ALL SIZES	LIQUID PRELL ALL SIZES	SHASTA ALL SIZES	HALO ALL SIZES	BRECK ALL SIZES	LUSTRE CREME ALL SIZES	ALL-OTHER SHAMPOOS ALL TYPES
MAY-JUN	$6708 100%	$273 4.1%	$291 4.3%	$324 4.8%	$112 1.7%	$534 8.0%	$ 985 14.6%	$713 10.7%	$3476 51.8%
JUL-AUG	6514 100	273 4.2	308 4.7	326 5.0	103 1.6	557 8.6	982 15.0	590 9.1	3375 51.8
SEP-OCT	6713 100	245 3.7	279 4.1	322 4.8	93 1.4	523 7.8	965 14.4	520 7.7	3766 56.1
NOV-DEC	6235 100	243 3.9	247 3.9	317 5.1	93 1.5	467 7.5	910 14.6	454 7.3	3504 56.2
1957									
JAN-FEB	$6434 100%	$246 3.8%	$263 4.1%	$331 5.2%	$ 85 1.3%	$480 7.4%	$ 916 14.3%	$438 6.8%	$3673 57.1%
MAR APR	6825 100	232 3.4	274 4.0	362 5.3	80 1.2	521 7.6	968 14.2	462 6.8	3926 57.5
MAY-JUN	7432 100	249 3.3	277 3.7	354 4.7	73 1.1	509 6.8	942 12.6	570 7.6	4304 60.2
JUL-AUG	6927 100	227 3.3	280 4.0	390 5.6	74 1.1	513 7.4	949 13.7	553 8.0	3644 52.6
SEP-OCT	7029 100	212 3.0	242 4.1	375 5.4	NOT SEG.	480 6.8	951 13.5	494 7.1	3261 46.3
NOV-DEC	6620 100	208 3.1	243 3.7	355 5.4		436 6.6	919 13.8	434 6.6	2933 44.3

269X

1957	WHITE RAIN ALL TYPES AND SIZES	EDEN ALL SIZES
MAY-JUN	NOT SEG.	
JUL-AUG	$297 4.3%	NOT SEG.
SEP-OCT	208 3.8	$692 9.8%
NOV-DEC	256 3.9	804 12.8

Commission's Exhibit No. 632A-D
Nielsen Trend Table 4—dentifrices



TREND TABLE 4

DENTIFRICES

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

		TOOTH PASTES																									
		COLGATE REGULAR						GLEEM						CREST						PEPSODENT							
1958	TOTAL DENTIFRICES	15¢	25¢	49¢	85¢	TOTAL		15¢	25¢	49¢	85¢	TOTAL		31¢	53¢	69¢	TOTAL			12¢	17¢	25¢	49¢				
NOV-DEC	$8370 100%					$2529 30.2%						$1460 17.5%															
1959																											
JAN-FEB	$8230 100%					$2454 29.8%						$1343 16.3%					$ 693 8.4%										
MAR-APR	8391 100					2263 27.0						1284 15.0					1146 13.7										
MAY-JUN	8578 100					2195 25.6						1258 14.6					975 11.4										
JUL-AUG	8880 100					2323 26.2						1345 15.2					928 10.4										
SEP-OCT	9800 100	$ 42 0.5%	$474 5.1%	$679 7.4%	$1155 12.3%	2350 25.5	$ 1 0.1%	$209 2.9%	$418 4.5%	$679 7.4%	1367 14.9	$143 1.6%	$289 3.1%	$483 5.2%	915 9.9	$ 16 0.2%	$ 1 -	-	$123 1.4%	$414							
NOV-DEC	8682 100	26 0.3	416 4.8	657 7.6	1171 13.4	2270 26.1	2 0.1	203 2.3	587 6.8	588 6.7	1380 15.9	121 1.4	251 2.9	444 5.1	816 9.4	6 0.1	-	-	107 1.2	322							
1957																											
JAN-FEB	$8633 100%	$ 23 0.3%	$390 4.5%	$616 7.1%	$1132 13.1%	$2160 25.1%	$ 1 -	$209 2.4%	$578 6.7%	$629 7.3%	$1415 16.4%	$107 1.2%	$367 4.3%	$376 4.3%	$ 848 9.8%	$ 5 0.1%	-	-	$103 1.2%	$434							

271X

COLGATE REGULAR



TREND TABLE 4

DENTIFRICES

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

E1

	TOOTH PASTES																																		ALL REMAINING PASTES & POWDERS
	GLEEM										CREST										PEPSODENT REGULAR										IPANA						
	15¢		25¢		49¢		65¢		TOTAL		31¢		53¢		69¢		TOTAL		12¢		17¢		25¢		49¢		65¢		79¢		TOTAL		10¢		23¢		43¢		63¢		TOTAL	
1.2%									$1460	17.3%																					$813	9.7%									$677	8.1%	$2889	34.3
.8%									$1343	16.3%									$ 653	8.4%											$794	9.7%									$600	7.3%	$2260	28.9
.0									1264	15.0									1145	13.7											778	9.3									588	7.0	2353	28.0
.6									1258	14.8									975	11.4											858	10.0									611	7.2	2881	31.2
.2									1345	15.2									928	10.4											982	11.1									681	7.8	2823	29.5
.5	$ 1	0.1%	$209	2.5%	$418	4.5%	$679	7.4%	1367	14.9	$143	1.6%	$289	3.1%	$483	5.2%	915	9.9	$ 18	0.2%	$ 1	-	$123	1.4%	$414	4.5%	$282	3.0%	$128	1.4%	984	10.5	$ 6	0.1%	$135	1.5%	$165	1.7%	$515	5.6%	821	8.9	2788	30.3
.1	2	0.1	203	2.3	587	6.8	588	6.7	1380	15.9	121	1.4	251	2.9	444	5.1	816	9.4	6	0.1	-	-	107	1.2	322	3.7	285	3.3	133	1.6	853	9.9	3	-	118	1.4	178	2.0	518	5.9	814	9.3	2549	29.4
.15	$ 1	-	$209	2.4%	$578	6.7%	$629	7.3%	$1415	16.4%	$107	1.2%	$367	4.3%	$374	4.3%	$ 848	9.8%	$ 5	0.1%	-	-	$103	1.2%	$434	4.9%	$283	3.8%	$128	1.5%	$821	10.7%	$ 8	0.1%	$134	1.4%	$288	2.3%	$488	5.6%	$815	9.4%	$2466	28.6

COLGATE REGULAR 79¢

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TREND TABLE 4 (SHEET 1 OF 2)

DENTIFRICES

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

6901

1956	TOTAL DENTIFRICES	TOOTH PASTES											
		COLGATE REGULAR						GLEEM					
		15¢	31¢	53¢	69¢	83¢	TOTAL	15¢	31¢	53¢	69¢	83¢	TOTAL
NOV-DEC	$ 8682 100%	$ 26 0.3%	$416 4.8%	$657 7.6%	$1171 13.4%	NOT MKTD.	$2270 26.1%	$ 2 0.1%	$203 2.3%	$567 6.9%	$588 6.7%		$1380 15.9%
1957													
JAN-FEB	$ 8633 100%	$ 23 0.3%	$390 4.5%	$616 7.1%	$1132 13.1%	$ 7 0.1%	$2168 25.1%	$ 1 -	$209 2.4%	$576 6.7%	$629 7.3%		$1415 16.4%
MAR-APR	8944 100	25 0.3	400 4.5	656 7.3	1013 11.3	256 2.9	2350 26.3	2 -	220 2.4	476 5.4	712 7.9		1410 15.7
MAY-JUN	9372 100	35 0.4	439 4.7	652 6.9	878 9.4	438 4.7	2442 26.1	1 -	247 2.6	472 5.0	743 8.0	NOT MKTD.	1463 15.6
JUL-AUG	9166 100	43 0.5	491 5.3	701 7.7	809 8.8	535 5.8	2579 28.1	1 0.1	287 3.1	482 5.2	723 7.9	$ 64 0.7%	1557 17.0
SEP-OCT	10047 100	33 0.3	737 7.4	631 6.2	816 8.2	592 5.9	2809 28.0	3 -	260 2.6	526 5.2	653 6.5	260 2.6	1702 16.9
NOV-DEC	9846 100	32 0.3	592 6.0	609 6.2	761 7.8	625 6.3	2619 26.6	3 -	241 2.5	555 5.6	544 5.5	262 2.7	1605 16.3

TREND TABLE 4 (SHEET 1 OF 2)

DENTIFRICES

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

6901

6323

AR	TOOTH PASTES																	
				GLEEM						CREST								
69¢	83¢	TOTAL	15¢	31¢	53¢	69¢	83¢	TOTAL	31¢	53¢	69¢	83¢	TOTAL					
1 13.4%	NOT MKTD.	$2270 26.1%	$ 2 0.1%	$203 2.3%	$567 6.5%	$588 6.7%		$1380 15.9%	$121 1.4%	$251 2.9%	$444 5.1%		$816 9.4%					
2 13.1%	$ 7 0.1%	$2168 25.1%	$ 1 -	$209 2.4%	$576 6.7%	$629 7.3%		$1415 16.4%	$107 1.2%	$367 4.3%	$374 4.3%		$848 9.8%					
3 11.3	256 2.9	2350 26.3	2 -	220 2.4	476 5.4	712 7.9		1410 15.7	104 1.2	354 3.9	344 3.9		802 9.0					
8 9.4	438 4.7	2442 26.1	1 -	247 2.6	472 5.0	743 8.0	NOT MKTD.	1463 15.6	117 1.2	292 3.1	388 4.2	NOT MKTD.	798 8.5					
9 8.8	535 5.8	2579 28.1	1 0.1	287 3.1	482 5.2	723 7.9	$ 64 0.7%	1557 17.0	123 1.4	250 2.7	364 4.0	$ 27 0.3%	764 8.4					
8 8.2	592 5.9	2809 28.0	3 -	260 2.6	526 5.2	653 6.5	260 2.6	1702 16.9	112 1.1	247 2.5	332 3.3	123 1.2	814 8.1					
1 7.8	625 6.3	2613 26.6	3 -	241 2.5	556 5.5	544 5.8	262 2.7	1605 16.3	106 1.1	237 2.4	292 3.0	139 1.4	774 7.9					

TREND TABLE 4

DENTIFRICES

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

6901

| YEAR | TOTAL DENTIFRICES | TOOTH PASTES | | |

TREND TABLE 4

DENTIFRICES

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

6901

632C

H1

	TOOTH PASTES																								ALL DENTIFRICES PASTES & POWDERS
	GLEEM				CREST				PEPSODENT REG.&.AM							IPANA									
	25¢	40¢	65¢	TOTAL	31¢	53¢	65¢	TOTAL	12¢	17¢	25¢	40¢	65¢	75¢	TOTAL	10¢	25¢	47¢	65¢	TOTAL	
				$4291 27.0%				$ 272 1.7%							$1585 10.0%						$1277 7.7%	$1810 11.3%
				$4294 28.1%				$ 635 3.9%							$1721 10.5%						$1278 7.8%	$1888 12.7%
				3778 23.5				2170 13.5							1630 10.0						1038 6.5	1688 10.5
				3833 22.8				2363 14.0							1729 10.2						- -	3199 18.8
				3798 22.6				2130 12.6							1855 11.1						- -	3232 19.4
-	$1370	7.0%	$1578	8.7%	$1279	7.1%	4243 23.4	$585 3.0%	$ 900 5.0%	$780 4.2%	2218 12.2	$ 2	-	$ 2	-	$336 1.9%	$1050 5.8%	$502 2.8%	$ 49 0.3%	1920 10.8	$ 12	-	$390 2.2%	$894 2.8%	$489 2.8%	1368 7.6	2514 11.7
0.1%	1127	5.8	1734	9.8	1314	6.7	4287 21.8	632 3.3	1386 7.0	1168 6.0	3184 16.3	1	-	2	-	336 1.7	984 4.9	984 3.0	55 0.3	1932 9.9	10	0.1%	350 1.8	528 2.7	681 4.2	1787 8.8	3880 11.7
0.1%	$1014	5.3%	$2184	11.4%	$1288	6.7%	$4494 23.8%	$547 2.9%	$1109 5.9%	$888 4.8%	$2544 13.3%	$ 2	-	-	-	$336 1.8%	$882 4.6%	$613 3.2%	$ 58 0.3%	$1891 9.9%	$ 10	0.1%	$342 1.8%	$648 3.3%	$744 3.9%	$1743 9.1%	$3127 11.3%

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1956 TABLE 4 (SHEET 1 OF 2)

DENTIFRICES

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

1956	TOTAL DENTIFRICES	TOOTH PASTES																					
		COLGATE REGULAR										GLEEM						CREST					
		15¢		31¢		53¢	69¢	83¢		TOTAL		15¢		31¢	53¢	69¢	83¢	TOTAL		31¢		53¢	69¢	83¢	
OCT-NOV	$19406	100%	$166	0.9%	$1726	8.8%	$2271 11.7%	$2013 10.3%	NOT MKTD.		$6176	31.7%	$ 12	0.1%	$1127	5.8%	$1754 9.0%	$1314 6.7%		$4207	21.6%	$632	3.3%	$1366 7.0%	$1166	6.0%	
1956-57																											
DEC-JAN	$19074	100%	$149	0.9%	$1575	8.8%	$2357 12.3%	$2096 11.0%	-	-	$6277	32.9%	$ 11	0.1%	$1014	5.3%	$2184 11.4%	$1285 6.7%		$4494	23.6%	$547	2.8%	$1109 5.9%	$ 888	4.6%	
FEB-MAR	19418	100	153	0.8	1672	8.6	2414 12.4	2118 10.9	$ 54	0.3%	6411	33.0	14	0.1	1130	5.8	1984 10.2	1477 7.6		4605	23.7	487	2.5	1279 6.6	703	3.6	
APR-MAY	19910	100	176	0.9	1735	8.7	2467 12.4	1965 9.9	409	2.0	6752	33.9	19	0.1	1165	5.9	1830 9.7	1520 7.6	NOT MKTD.	4634	23.3	483	2.4	1029 5.2	716	3.6	NOT MKTD.
JUN-JUL	19461	100	182	0.9	1750	9.0	2415 12.4	1799 9.3	550	2.8	6697	34.4	23	0.1	1159	5.0	1942 10.0	1552 7.9	- -	4676	24.0	491	2.6	896 4.6	731	3.7	-
AUG-SEP	20664	100	186	0.9	1989	9.5	2559 12.4	1953 9.5	636	3.0	7300	35.3	21	0.1	1273	6.2	2086 10.1	1905 7.8	$133 0.6%	5118	24.8	497	2.4	829 4.0	717	3.5	$ 25 0.1
OCT-NOV	21807	100	168	0.9	243	11.1	2569 11.8	2022 9.3	742	3.4	7951	36.5	15	0.1	1270	5.9	1588 9.1	1569 7.2	294 1.3	5136	23.5	513	2.4	872 4.0	737	3.4	83 0.4

277X

TREND TABLE 4 (SHEET 1 OF 2)

DENTIFRICES

CONSUMER SALES - BY ITEM - DOLLAR BASIS (000)

AT COST PRICE TO CONSUMER

6901 6320

TOOTH PASTES

COLGATE REGULAR					GLEEM						CREST					PEPSODENT REGULAR*					
39¢	69¢	83¢	TOTAL		15¢	31¢	53¢	69¢	83¢	TOTAL	31¢	53¢	69¢	83¢	TOTAL	15¢	31¢	53¢	59¢	83¢	TOTAL
11.7%	$2013 10.3%	NOT MKTD.	$6179 31.7%		$ 12 0.1%	$1127 5.8%	$1754 9.0%	$1314 6.7%		$4207 21.6%	$632 3.3%	$1366 7.0%	$1166 6.0%		$3166 16.3%	$ 3 -	$336 1.7%	$ 954 4.9%	$584 3.0%	$ 55 0.3%	$1932 9.9%
12.3%	$2096 11.0%	- -	$6277 32.9%		$ 11 0.1%	$1014 5.3%	$2184 11.4%	$1285 6.8%		$4494 23.6%	$547 2.8%	$1109 5.9%	$ 888 4.6%		$2544 13.3%	$ 2 -	$336 1.8%	$ 882 4.6%	$613 3.2%	$ 58 0.3%	$1891 9.9%
12.4	2118 10.9	$ 54 0.3%	6411 33.0		14 0.1	1130 5.8	1984 10.2	1477 7.6		4605 23.7	487 2.5	1279 6.6	703 3.6		2469 12.7	4 0.1%	342 1.7	1208 6.3	573 2.9	61 0.3	2188 11.3
12.4	1965 9.9	409 2.0	6752 33.9		19 0.1	1185 5.9	1930 9.7	1520 7.6	NOT MKTD.	4634 23.3	483 2.4	1029 5.2	716 3.6	NOT MKTD.	2228 11.2	3 -	373 1.9	1121 5.6	583 3.0	65 0.3	2161 10.8
12.4	1799 9.3	550 2.8	6697 34.4		23 0.1	1159 6.0	1942 10.0	1552 7.9	- -	4676 24.0	491 2.6	896 4.6	731 3.7	- -	2118 10.9	6 0.1	434 2.0	996 5.2	634 3.2	69 0.3	2099 10.8
12.6	1953 9.5	636 3.0	7303 35.3		21 0.1	1273 6.2	2086 10.1	1505 7.8	$133 0.6%	5118 24.8	497 2.4	829 4.0	717 3.5	$ 25 0.1%	2068 10.0	6 0.1	439 1.9	963 4.7	620 3.0	82 0.4	2080 10.1
11.8	2022 9.3	742 3.4	7955 36.5		15 0.1	1270 5.9	1988 9.1	1569 7.2	294 1.3	5136 23.5	513 2.4	872 4.0	737 3.4	83 0.4	2275 10.2	5	404 1.8	878 4.0	605 2.7	106 0.5	2098 9.4

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Commission's Exhibit No. 634 C
Nielsen shares of sales 634C only on dentifrices
(ounce basis)

SHARES of OUNCE SALES on DENTIFRICES · Total U.S.

E 12

DRUG & FOOD STORES COMBINED

	1954	'55	'56	'57	JJA '55	ASO	OND	DJF '56	FMA	AMJ	JJA	ASO	OND	DJF '57	FMA	AMJ	JJA	ASO	OND	DJF '58	FMA	AMJ	JJA	ASO	OND	DJF '59
TOTAL OUNCE SALES (MILLIONS)	884.7	1885.3	1870.2	1196.2	166.9	171.1	171.9	172.4	171.8	173.1	174.5	186.5	191.9	189.2	194.5	199.7	198.9	207.0	206.9							
COLGATE REG.	34.7	36.0	32.9	32.5	35.7	37.3	37.5	36.7	34.5	32.6	32.2	31.5	30.2	30.6	31.1	32.0	32.4	33.8	34.7							
	307.1	378.0	351.7	388.6	59.6	63.8	64.4	63.3	59.2	56.4	56.2	58.7	57.9	57.9	60.5	63.9	64.5	70.1	71.8							
PEPSODENT REG.	18.5	18.0	11.2	11.0	9.4	9.6	11.0	11.4	10.4	10.8	12.1	11.7	10.7	10.9	12.5	11.7	11.2	10.4	9.7							
	92.7	108.5	119.6	132.0	15.7	16.4	18.8	19.6	17.8	19.7	21.1	21.8	22.5	22.7	24.2	23.4	22.1	21.5	20.0							
IPANA REG.	6.3	6.8	6.6	9.0	7.5	7.1	6.6	6.3	5.4	6.0	6.1	7.3	8.4	8.3	8.1	9.1	9.0	9.7	8.6							
	55.7	68.4	71.2	85.5	12.5	12.1	11.4	11.9	9.3	10.6	10.6	13.7	15.2	15.7	15.7	19.7	18.0	20.1	17.9							
IPANA PLUS																			3.3							
																			6.7							
A.O. DENTIFRICES	29.6	21.9	17.0	14.9					15.6	17.4	17.7	17.5	16.7	16.6	15.2	15.1	16.5	14.6								
	262.8	259.7	182.4	218.4	21.2	20.7	18.7	17.3	26.9	30.2	32.9	32.7	32.8	30.2	29.7	30.2	31.4	29.8	26.1							
					35.5	35.4	32.1	29.7																		
GLEEM			21.3	21.8					21.4	20.7	20.6	21.1	20.5	22.3	21.6	21.1	21.5	22.8	21.7							
			227.5	260.6																						
SHARE	18.9	24.1				24.8	24.3	23.4	36.8	35.8	36.0	39.3	39.4	42.1	42.0	42.2	43.0	46.5	44.8							
						42.6	41.9	40.4																		
CREST	16.7.2	36.2.5	11.9	10.3	26.2				12.7	12.5	11.3	10.9	13.5	11.9	11.5	10.2	9.5	9.2	9.4							
					43.6																					
OUNCE SALES (MILLIONS)	-	225.1	117.8	122.8	-	8.5	9.9	8.3	21.8	21.6	19.7	20.3	25.9	22.6	22.4	20.3	18.9	19.0	19.6							

YR. ENDING DEC. 31 IN DRUG & NOV. 30 IN FOOD

* 6 MONTHS

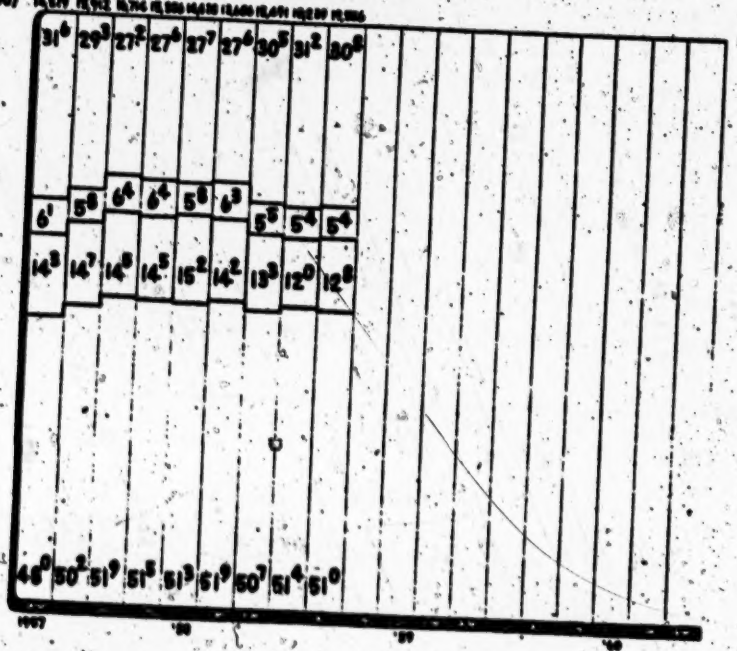
(122)

FEDERAL TRADE COMMISSION
DOCKET [illegible] EXHIBIT NO. 646
IN THE MATTER [illegible]
DATE 7/9/59 REPORTER [illegible]

Commission's Exhibit No. 646
Nielsen chart on liquid bleach sales in Southeast

Competitive Shares of LIQUID BLEACH SALES · Southeast

Grocery Stores · Quart Equiv. Basis



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Commission's Exhibit No. 684
A & P purchases of Bright Sail and Clorox
1956-1958

A&P Case Purchases of Bright Sail and Clorox
1956-1958 (for six month periods)
(on quart equivalent basis)

	Clorox 1/ (quarts)	Bright Sail 1/ (quarts)	Bright Sail as percent of Clorox
1956 - first six months	13,197,760	11,485,572	87.0
1956 - last six months	14,671,564	13,112,056	89.4
1957 - first six months	14,372,416	12,093,060	84.1
1957 - last six months	15,799,324	13,734,148	86.9
1958 - first six months	14,563,540	12,913,268	88.7

Source: Respondent Exhibits 79, 80 and 81.

FEDERAL TRADE COMMISSION
DOCKET NO. 6881 EXHIBIT NO. 684
IN THE MATTER OF The Procter & Gamble Company
DATE 2/2/59 WITNESS Smith
ACE REPORTING CO., Official Reporter
By Ace

FEDERAL TRADE COMMISSION
DOCKET NO. 6[illegible] EXHIBIT NO. 696-a
IN THE MATTER OF
DATE 2/3/59
ACE REPORTING CO., OFFICIAL REPORTERS
By dee

Commission's Exhibit No. 696A-J
Manufacturers of liquid bleach in United States

Manufacturers of Liquid Bleach in the United States, Showing Dun & Bradstreet Estimated Financial Strength and Product Classification, 1957.

$ 1/	Product Code 2/	Company Name, City and State
3/		ABC Bleach Co., Detroit, Mich. (including White Flash)
-	2842	Acqua-Lina Mfg. Company, Brooklyn, New York.
H	2899	Active Bleach Company, Cleveland, Ohio.
DX	2841	Adirondack Chemical Company, Plattsburgh, N. Y.
3/		Allevato, Joseph, Johnstown, Pennsylvania.
F	2819	American Bleach Mfg. Company, Louisville, Ky.
-	2819	American Brands Company, Richmond, Virginia.
-	2819	Anderson, E. H., Portland, Oregon.
3/		Aunt Lena Chemical Products Co., Chicago, Ill.
-	2842	Austin (James) Company, Mars, Pennsylvania.
3/		B & W Bleach Company, Middleboro, Mass.
L	5027	Baldwin Chemical & Specialty Co., Everett, Mass.
C	2841	Barton Chemical Company, Chicago, Ill.
3/		Biddeford Specialty Company, Biddeford, Maine.
3/		Bielidlo Packing Company, Brooklyn, New York.
-	2829	Bleach Products Company, Charleston, W. Va.
3/		Bleaching Products Mill, Ashland, New Hamp.
3/		Blue Diamond Company, Brooklyn, New York
3/		Blue Magic, Inc., Passaic, N.J. (owned by Prescott Co)
-	2094	Blue Magic Company, Wilson, North Carolina
3/		Blue Ribbon Packing Company, Bronx, New York.
C	2842	Brite House, Chicago, Illinois
3/		Brooklyn Laundry Products Co., Brooklyn, N. Y.
F	2842	Caray Chemical Corp., Bridgeport, West Va.
3/		Carrier Chemical Company, Chicopee, Mass.
3/		Caso, Michael, Watertown, Mass.
G	2899	Cato Chemical Company, Honolulu, T. H.
3/		Champion Bleaching Water Co., Watertown, Mass.
3/		Christy's Bleaching Water, Brockton, Mass.
-	2899	Clean-O Chemical Company, Bronx, New York.
C	28X99	Clorinated Products, Baltimore, Maryland.
3/		Cloro Bleach Company, New York, New York.
3/		Clorolene Cleanser Company, Detroit, Mich.
B	2842	Coastal Chemical Company, Savannah, Georgia.
3/		Columbia Bleach Company, Utica, New York.
D	2833	Commercial Chemical, Cincinnati, Ohio.
3/		Cosmo Washing Chemical Company, Brooklyn, New York
E	2899	Crescent Bottling Works, Little Falls, N. J.
CX	2099	Cumberland Mfg. Company, Nashville, Tenn.
-	28X19	Cumberland Products Company, Fayetteville, N. C.

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FEDERAL TRADE COMMISSION
696-B

Manufacturers of Liquid Bleach Cont'd. - 2

$ 1/	Product Code 2/	Company Name, City and State
D	2819	Danais (John) Company, Manchester, N. H.
3/ -		Deer Head Chemical Company, Everett, Mass.
-	2819	Delta Chemical Mfg. Company, Baltimore, Md.
3/ -		Detelco Lab., Detroit, Mich.
-	2099	Dolly Adams Food Corp., Van Nuys, Calif.
CX	2841	Don's Chemical Company, Anchorage, Alaska.
F	5087	Du-Well Products Company, Willimansett, Mass.
H	2833	Eagle Chemical Works, Scranton, Penn.
-	2819	Electro Bleach Products Company, Gardena, Calif.
H	2842	Ellwood Chemical, Ellwood City, Penn.
B	2096	Erbrich (J.H.) Products Co., Indianapolis, Ind.
G	2842	E-Z Bleach, Inc., New Bedford, Mass.
3/		Fidelity Bleach Company, Chicago, Ill.
AA	5044	Fischer (B) & Company, New York, New York.
G	2842	G & G Chemical Company, Hopewell, Virginia.
-	2842	Gardiner Mfg. Company, Buffalo, New York
F	2829	Golden Bleaching Water Company, Medford, Mass.
3/		Gonnella, Severino, Syracuse, New York.
3/		Gotham Chemical Company, Brooklyn, New York.
3/		Griffin, Donald E., Chicago, Illinois.
AA	5042	Griffin Groceries, Muskogee, Oklahoma.
-	2035	Grocers Products Company, Brooklyn, New York.
-	2899	Herman, Morton & Company, Chicago, Illinois.
3/		Hickory Chem. Laboratories, Angola, Indiana.
-	2842	Hilex Company, St. Paul, Minn.
		Home Chemical Co., St. Paul, Minn. (See parent Hilex Co.)
AA	20X51	Home Needs Co. (Div. Safeway Stores) Los Angeles, Calif.
AX	2842	Hood Chemical Company, Ardmore, Penn.
-	2091	Hulman & Company, Terre Haute, Indiana.
C	5029	Hydrox Chemical Co. of Illinois, Chicago, Ill.
D	2819	Hygiene Chemical Company, Richmond, Virginia.
F	2899	Hy-Lo Chemical Company, Minneapolis, Minn.
-	5139	Hy-Tex Chemical Company, Newark, New Jersey.
E	2842	Ideal Laboratories, Pittsburgh, Penn.
-	2842	Imperial Products Company, Philadelphia, Penn.
3/		Independent Chemical Company, Brooklyn, New York.
3/		Inter Island Chemical Works, Honolulu, T. H.
G	2842	International Chemical Water Co., Philadelphia, Pa.
G	5027	Island Chemical Company, Honolulu, T. H.

Manufacturers of Liquid Bleach Cont'd. - 3

$ 1/	Product Code 2/	Company Name, City and State
3/		Javelux Products Company, Scranton, Penn.
DX	2899	Jefferson Food Products Co., Los Angeles, Calif.
-	2812	Jerry Lee Chemical Company, Pensacola, Florida.
F	2899	Keller Products Company, Columbus, Ohio.
K	2841	Kitzinger Company, Hollidaysburg, Penn.
-	2842	Kleen Brite Chemical Company, Rochester, N. Y.
3/		Klor-X Products Company, Chicago, Ill.
3/		Koel Products Company, Detroit, Mich.
E	2842	K O K Cleanser Company, Columbus, Ohio.
K	59ZZ	Konco & Sons, Chicago, Illinois.
-	2842	Kormon Water Company, Fall River, Mass.
AA	20X35	Lady's Choice Foods, Los Angeles, Calif.
3/		La Pulito Chemical Company, Moosic, Penn.
-	2842	Laundry White Lab., Detroit, Mich.
F	28X41	Lavo Company, Milwaukee, Wisc.
-	2819	Leto (B) Packing Company, New Orleans, La.
-	2819	Lily White Products Company, Chicago, Ill.
B	2842	Linco Products, Chicago, Illinois.
-	2842	Linen White Corp., Hattiesburg, Miss.
-	2899	Linen White Products Company, Autreyville, N. C.
-	2819	Line-X Company, Lola, Kansas.
3/		Lisciva Company, Syracuse, New York.
3/		Lite House Bleach Company, Cleveland, Ohio
3/		Londra Bleach Products, Chicago, Ill.
3/		Lorenz (Harry H.) Laboratories, Pittsburgh, Penn.
-	2842	Lunox Chemical Works, Avoca, Penn.
G	2899	Made-Rite Products Company, Manchester, N. H.
3/		Magix Chemical Company, Scranton, Penn.
3/		Malamisura (A) & Sons, Youngstown, Ohio.
F	5029	Mar-Glo Chemical Company, Canton, Ohio
E	2842	Marquette Chemical Corp., Muskegon, Mich.
3/		Master X Bleach Company, Portland, Oregon.
3/		McDonough Products Company, Tacoma, Wash.
-	2842	Mel-O-Mix Company, New York, N. Y.
H	2899	Mezzacappa Products Company, Cleveland, Ohio.
F	2899	Miami Products & Chemical Company, Dayton, Ohio.
3/		Miracle Bleach Water Company, North Windham, Maine.
-	502N	Mission Chemical Company, San Diego, Calif.
E	2899	Mitchellite Laboratories, San Antonio, Texas.
K	2819	Mon-D-Aid & Cleanit Company, Butler, Penn.
-	2899	Moore (A.F.) & Company, Worcester, Mass.
3/		Morning Star Washing Fluid Co., Bayonne, N. J.

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FEDERAL TRADE COMMISSION
DOCKET NO. 9696-A

Manufacturers of Liquid Bleach Cont'd. - 4

$ 1/	Product Code 2/	Company Name, City and State
	2399	
-	5077	Netherson (Charles H.) So-Wite, Dallas, Texas.
3/		Nevada Specialty Company, Henderson, Nevada.
F	2819	New Bright Chemical Company, Atlantic City, N.J.
A	2811	New Castle Chemical Company, New Castle, Penn.
3/		New Castle Chemical Fluid Co., New Castle, Penn.
3/		New England Bleaching, Auburn, Maine.
D	2842	No Boil Fluid Chemical Co., Jamestown, New York.
-	2842	No-Name Products, Inc., Milwaukee, Wisc.
F	50ZZ	Norris Chemical Company, Hopewell, Virginia.
3/		Northern Chemicals, Inc., New Haven, Conn.
F	2842	Novel Wash Company, Inc., St. Louis, Missouri.
H	2899	Novel Wash Products Company, Milwaukee, Wisc.
G	2841	No-Worry Chemical Company, Newark, New Jersey.
-	2842	Nu-Kleenzit Company, Atlanta, Georgia.
B	2841	Nu-Way Bleach Company, Bristow, Okla.
J	59TA	O-So-White Bleach, Cleveland, Ohio.
-	2841	O-So-White Products Company, Chicago, Ill.
J	2899	P & G Bleaching Water Company, Cambridge, Mass.
-	2819	Patterson Laboratories, Detroit, Mich.
3/		Peoria Bleach Company, Peoria, Illinois.
C	2842	Piedmont Chemical Company, Charlotte, N. C.
B	2819	Polar Chemicals, Inc., Lewiston, Maine.
3/		Police Products, Utica, New York.
-	28X42	Prescott (J.L.) Company, Passaic, New Jersey.
3/		Presto Chemical Company, Bronx, New York.
AA	5042	Price (John) Div. of Perloff Bros., Philadelphia, Pa.
3/		Proxite Products, Inc., Brooklyn, New York.
3/		Pure White Washing Fluid Co., Ellwood City, Penn.
AA	28X19	Purex Corporation, Ltd., South Gate, Calif.
	2842	
G	59ZZ	Quick Laboratories & Sales Co., Chicago, Ill.
3/		Rad, Inc., New York, N. Y.
CX	2842	Radiant Wash Solution Company, Olean, New York
3/		Ramona & Perez, Bronx, New York.
3/		Record, Earl R., Chicago, Illinois
3/		Red Circle Products, Newark, New Jersey.
3/		Red Label Products, Lawrence, Mass.
3/		Reed Chemical Company, Philadelphia, Penn.
3/		Reina Chemical Company, Lewiston, Maine.
K	2819	Re-Nu Bleach Company, Cleveland, Ohio.
E	20X94	Revell (P.H.) Company, Woburn, Mass. (see parent - Zippy Products, Inc.)
F	5027	Rex-O-Lav Products, Poughkeepsie, New York.

FEDERAL TRADE COMMISSION
DOCKET NO. [redacted] 696-E

Manufacturers of Liquid Bleach Cont'd. - 5

$ 1/	Product Code 2/	Company Name, City and State
3/		Riddle's Old Mission Bleach Co., Toledo, Ohio.
-	28X93	Roisman Products, Oklahoma City, Okla.
AA	2843	Roman Cleanser Company, Detroit, Mich.
3/		Rose Lux Chemical Company, Brooklyn, New York.
-	2842	Rox Chemical Mfg. Company, Richmond, Virginia.
7/		Royal-Souders, Inc., Dayton, Ohio. (see parent - Miami Products & Chemical.)
DX	2842	S. S. Cleanser Company, Des Moines, Iowa
3/		Saber Chemical & Supply Co., North Tewksbury, Mass.
3/		Sacco, C. A., Chemical Company, Chicago, Ill.
3/		Sana Bleach Products Company, Cleveland, Ohio.
3/		Sandis Products, Chicago, Ill.
	28X42)	
-	5027)	Sapo Elixir Company, St. Louis, Missouri.
D	2899	Savol Bleach Company, East Hartford, Conn.
	28X96)	
-	5027)	Schwartz Company, Inc., El Paso, Texas
3/		Serge, Daniel, Fairmont, West Virginia.
3/		Shirox Chemical Company, Pittsburgh, Penn.
BX	2899	Sinclair Mfg. Company, Toldeo, Ohio
E	2842	Smith Chemical Products, Honolulu, T. H.
E	50SA	Smoky Mt. Distributors, Ashville, N. C.
-	2899	Sno-ee Products, Punxsutawney, Penn.
E	2842	Sno-Lene Products Company, Ferndale, Mich.
3/		Snow Clean Bleach Company, Houston, Texas.
3/		Snowdrift Washing Fluid, Norwood, Mass.
3/		Snow White Chemical Company, New York, N. Y.
3/		So White, Plover, Wisconsin.
3/		So-Hy Products, Inc., Asheville, N. C.
3/		Spark-O-Bleach Washing Solution, Cleveland, Ohio.
3/		Speedy Cleanser Bleach Company, Detroit, Mich.
L	2842	Starlight Chemical Company, Pittston, Penn.
3/		Starlight Products, Brockton, Mass.
3/		Star Water, Milford, Conn.
	2899)	
D	50GA)	Stawite Chemical Company, Baltimore, Md.
4/		Sunlite Chemical Corp., East Providence, R. I.
3/		Sunny White Products, Chicago, Ill.
3/		Sun-Ray Clore Products Company, Chicago, Ill.
5/		Suntex Chemical Company, Philadelphia, Penn.
L	2842	Superior Cleanser Company, Detroit, Mich
F	5087	Swartz, Orville J., Company, Melrose Park, Ill.
F	2841	Sweet Clean Products Company, Cleveland, Ohio.

Manufacturers of Liquid Bleach Cont'd. - 6

$ 1/	Product Code 2/	Company Name, City and State
3/		T & V Products Company, Providence, R. I.
E	2842) 5029)	Tardiff Brothers, Inc., River Rouge, Mich.
-	28X19	Tesco Chemicals, Inc., Atlanta, Georgia.
AA	2899	Texize Chemical Company, Greenville, S. C.
3/		Thompson's Bleach All, Toledo, Ohio
D	28X42	Thoro Products Company, Denver, Colo.
-	2094	Thrifty Laundry Products Co., Philadelphia, Pa.
F	5049	Tileston Chemical Specialty Co., Everett, Mass.
G	2819	Tobin & Mesirow Products, Los Angeles, Calif.
F	2842	Toc's Products, Inc., Syracuse, N. Y.
-	28X97	Trager Mfg. Company, Scranton, Penn.
-	28X42	Uddo, F., & Sons, New Orleans, La.
3/		Universal Bleach Company, Brooklyn, N. Y.
		Vel Tex Chemical Co., Minneapolis, Minn. (see parent Hy-Lo Chemical)
-	2842	Victors-Steubenville, Ohio (Victor's Quick Wash & Soap Co., per Dun & Bradstreet)
H	59TA	Wagner's Soap & Bleach Co., Pittsburgh, Pa.
		White Flash Cleanser Co., Detroit, Mich. (See parent, ABC Bleach)
3/		White Swan Products, Lewiston, Maine.
3/		White Swan Washing Fluid & Mfg. Co., Moonachie, N.J.
3/		Whytee Products (Frank Lento) Punxsutawney, Penn.
-	2842	Wilbert Products Company, Inc., New York, N. Y.
3/		Witch City Bleach Water Company, Salem, Mass.
-	2819	Wonder Chemical Company, Philadelphia, Penn.
-	2842	Wonder White Chemical Co., Wilkes Barre, Penn.
3/		Woodbury Distributing Company, Baltimore, Md.
E	2842	X-Cello Company, Cleveland, Ohio
3/		Zero Bleach, Inc., Cleveland, Ohio
3/		Zippy Products, Inc., Woburn, Mass.

1/ Indicates estimated financial strength as reported by Dun & Bradstreet. See Appendix A for key to ratings.

2/ See Appemdix B for definition of product codes.

3/ Company not listed by Dun & Bradstreet at this location, nor by Thomas' Register of American Manufacturers, or Thomas's Wholesale Grocery and Kindred Trades Register.

FEDERAL TRADE COMMISSION
DOCKET NO. 6331 [illegible] 696-H

Footnotes Cont'd. - 7

4/ Thomas' Register of American Manufacturers, 1958 edition lists Sunlight Chemical Corp., Phillipsdale, Rhode Island (East Providence vicinity), as having estimated minumum capital of more than $100,000.

5/ Thomas' Register of American Manufacturers, 1958 edition, lists Suntex Chemical Company, Philadelphia, Penn., as having estimated minimum capital of more than $25,000.

6/ Zippy Products, Inc., not listed by any of the three sources as being located at Woburn, Mass. However, Thomas' Wholesale Grocery Register lists Zippy Products, Inc., at Landsdown, Penn., a manufacturer or seller of liquid starch, as having approcimate capital over $100,000.

7/ Royal-Shoulders, Inc., of Dayton, Ohio, is listed in Thomas' Wholesale Grocery Register as a manufacturer or seller of flavor extracts with approximate capital over $25,000.

Sources: (1) Respondent Exhibits 112-A through 112-U, a 21-page list of company names and addresses in alphabetical order.
(2) Reference Book of Dun & Bradstreet, Inc., issue of November, 1958.
(3) An examination of the following publications was made relative to those companies which were not listed by Dun & Bradstreet. Data with reference to several such companies have been inserted by individual footnotes. The two sources were as follows:

Thomas' Register of American Manufacturers, Volume IV, 1958 edition, alphabetical listing of company names

and

Thomas' Wholesale Grocery and Kindred Trades Register, 60th edition, July, 1958, pages 1536 through 1693, alphabetical listing of company names including wholesale grocers, chain stores, voluntary groups, brokers, and other lines of business.

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FEDERAL TRADE COMMISSION
DOCKET NO. 6961 COMM'R EXHIBIT NO. 696-X

APPENDIX A

Key to Dun & Bradstreet Ratings
Estimated Financial Strength

Aa	over $1,000,000
AX	over $750,000
A	$500,000 to $750,000
BX	$300,000 to $500,000
B	$200,000 to $300,000
CX	$125,000 to $200,000
C	$75,000 to $125,000
DX	$50,000 to $75,000
D	$35,000 to $50,000
E	$20,000 to $35,000
F	$10,000 to $20,000
G	$5,000 to $10,000
H	$3,000 to $5,000
I	(symbol not used)
J	$2,000 to $3,000
K	$1,000 to $2,000
L	Up to $1,000

Dash (-) indicates absence of rating.

FEDERAL TRADE COMMISSION
DOCKET NO. 6981 COMMISSION EXHIBIT NO. 696-J

APPENDIX B

Standard Industrial Classification Used by Dun & Bradstreet

Manufacturers:

Code No.	Major Product Classification
20 35	Pickled fruits and vegetables; vegetable sauces and seasonings; salad dressings.
20x35	Pickled fruits and vegetables; vegetable sauces and seasonings; salad dressings; also additional manufacturing lines.
20x51	Bread and other bakery products (except biscuits, crackers, and pretzels); also additional manufacturing line.
20 91	Baking powder, yeast, and other leavening compounds.
20 94	Corn sirup, corn sugar, corn oil and starch.
20x94	Corn sirup, corn sugar, corn oil and starch; also additional manufacturing line.
20 96	Vinegar and cider.
20 99	Food preparations, n.e.c.
23 99	Fabricated textile products, n.e.c.
28 11	Sulfuric acid
28 12	Alkalies and chlorine
28 19	Industrial inorganic chemicals, n.e.c.
28x19	Industrial inorganic chemicals, n.e.c.; also addotional manufacturing line
28 29	Industrial organic chemicals, n.e.c.
28 33	Inorganic and organic medicinal chemicals
28 41	Soap and glycerin
28x41	Soap amd glycerin; also additional manufacturing line
28 42	Cleaning and polishing preparations
28x42	Cleaning and polishing preparations; also additional manufacturing line.
28 43	Sulfonated oils and assistants
28x93	Perfumes, cosmetics, and other toilet preparations; also additional manufacturing line.
28x96	Compressed and liquefied gases; also additional manufacturing line.
28x97	Insecticides and fungicides; also additional manufacturing line.
28 99	Chemicals and chemical products, n.e.c.
28x99	Chemicals and chemical products, n.e.c.; also additional manufacturing line.

Wholesale:

50 27	Industrial chemicals
50 29	Chemicals, drugs, and allied products, n.e.c.
50 42	Groceries (general line)

FEDERAL TRADE COMMISSION
DOCKET NO. 8951 EXHIBIT NO. 696-J

Wholesale Cont'd.

50	44	Coffee, tea, and spices
50	49	Groceries and food specialties
50	77	Air-conditioning and ventilating equipment and supplies
50	87	Equipment and supplies for service establishments
50	GA	General merchandise
50	SA	Beer and other fermented malt liquors
50	ZN	Janitor's supplies
50	ZZ	Merchant wholesalers, n.e.c.
51	39	Agents and brokers, n.e.c.

Retail:

54	13	Grocery stores, with fresh meat
59	TA	House-to-house retailers
59	ZZ	Miscellaneous retail stores, n.e.c.

Commission's Exhibit No. 702
Procter annual report for year ended June 30, 1958

THE PROCTER & G.

and Subsidiar

CONSOLIDATED BALANCE SHE

Assets	1958	1957
CURRENT ASSETS:		
Cash	$ 47,235,213	$ 42,078,359
U. S. Government and other marketable securities, at cost (approximately market)	58,898,773	61,971,210
Accounts receivable, less reserve of $487,997 for 1958 and $386,803 for 1957	66,025,418	57,704,934
Inventories, at the lower of cost (partly Lifo) or market	171,787,469	170,576,810
Total current assets	$343,946,873	$332,331,313
LOANS, RECEIVABLES, ETC., less reserves	$ 17,533,803	$ 15,234,81[illegible]
PROPERTY, PLANT AND EQUIPMENT, at cost:		
Land	$ 15,484,226	$ 13,402,040
Timberlands, less depletion	17,873,191	17,682,236
Buildings and equipment	497,845,368	447,639,947
Total	$531,202,785	$478,724,223
Less accumulated depreciation	172,874,482	155,078,281
Property, plant and equipment, net	$358,328,303	$323,645,942
GOODWILL, PATENTS AND LICENSES	$ 24,910,736	$ 6,433,758
PREPAID EXPENSES AND DEFERRED CHARGES	$ 11,271,717	$ 10,626,797
TOTAL	$755,991,432	$688,272,623

See notes to financial statements.

MBLE COMPANY

Companies

T. JUNE 30, 1958 AND 1957

Liabilities	1958	1957
CURRENT LIABILITIES:		
Debt of subsidiaries due within one year	$ 6,633,086	$ 11,761,320
Accounts payable and accruals	84,462,840	77,418,409
Federal taxes on income, less U. S. Government securities of $48,927,678 for 1958 and $49,501,700 for 1957	—	—
Other taxes	16,990,429	15,831,124
Total current liabilities	$108,106,355	$105,010,853
LONG-TERM DEBT (maturing after one year):		
Debentures, 3⅛% (due 1967 to 1981)	$ 70,000,000	$ 70,000,000
Notes, 3¼% (due 1963 to 1972)	30,000,000	30,000,000
Debt of subsidiaries (due 1959 to 1973)	13,327,650	13,564,824
Total long-term debt	$113,327,650	$113,564,824
RESERVES:		
Self-insured risks	$ 5,040,508	$ 4,979,665
Foreign exchange fluctuations	3,040,000	2,620,000
Total reserves	$ 8,080,508	$ 7,599,665
CAPITAL AND RETAINED EARNINGS:		
Preferred shares	$ 2,250,000	$ 2,250,000
Common shares	41,122,930	39,737,328
Additional paid-in capital	61,536,779	30,806,920
Earnings retained for use in the business	421,367,210	389,303,033
Total capital and retained earnings	$526,476,919	$462,097,281
TOTAL	$755,991,432	$688,272,623

THE PROCTER

and Subsidiary

CONSOLIDATED STATEMENTS OF EARNINGS AN

YEARS ENDED JUN

Earnings

	1988	1987
▷ Net Sales	$1,293,163,269	$1,156,389,726
Cost of products sold	829,110,566	741,093,993
Marketing, general and administrative expenses	317,047,258	277,038,781
Earnings from operations	$ 149,005,445	$ 138,256,952
Interest on investments, etc.	3,992,060	2,993,320
Interest expense	4,813,265	4,036,558
Other charges, net	784,393	770,568
Earnings before taxes on income	$ 147,399,849	$ 136,443,146
Federal income taxes	$ 65,051,000	$ 58,000,000
Other income taxes	9,152,231	9,735,770
Total taxes on income	$ 74,203,231	$ 68,635,770
▷ Consolidated Net Earnings	$ 73,196,618	$ 67,807,376

See notes to financial statements.

ghtly Bound

GAMBLE COMPANY

Companies

...GS RETAINED FOR USE IN THE BUSINESS

..., 1958 AND 1957

Earnings Retained for Use in the Business

	1958	1957
Balance, beginning of year	$389,303,033	$358,033,873
Add:		
Consolidated net earnings	73,196,618	67,807,376
Total	$462,499,651	$425,841,249
Deduct:		
Common dividends—$2.00 per share in 1958 and $1.85 in 1957	$ 40,752,441	$ 36,378,216
Preferred dividends—$4.00 per share	180,000	180,000
Total dividends	$ 40,932,441	$ 36,558,216
Balance, end of year	$421,567,210	$389,303,033

NOTES *to financial statements*

1. Goodwill, patents and licenses at June 30, 1958 includes goodwill of $24,910,731, which represents the excess of the purchase price of going businesses acquired by the Company over the value ascribed to the net tangible assets acquired. It is the Company's present intention not to amortize amounts carried in this account.

2. The debentures may be redeemed at the option of the Company, as a whole or in part, at any time, as specified in the indenture. Sinking fund payments are required commencing in 1967.

   The long-term notes may be prepaid at the option of the Company as specified in the loan agreement. Annual prepayments are required commencing April 1, 1963. At June 30, 1958, under covenants contained in the loan agreement, the Company was limited to approximately $167,000,000 as to aggregate payments which could be made for dividends on its capital stock, the purchase thereof, and similar purposes.

3. There were 42,500 shares of 8% (cumulative) preferred stock of $100 par value each authorized and outstanding at June 30, 1958 and 1957; also, at those dates, 457,500 shares of authorized $100 par value preferred stock were undesignated and unissued.

   The authorized common stock of the Company amounted to 25,600,000 shares of $2 par value each at June 30, 1958 and 1957. There were 20,561,465 shares and 19,868,665 shares outstanding at June 30, 1958 and 1957, respectively.

4. Additional paid-in capital increased in the amount of $30,729,359 during the year, details of which are as follows: $1,709,007 represented the excess of proceeds over the par value of 53,223 shares of common stock sold under the Stock Option Plan, and $29,020,352 represented the excess of the market value over the par value of 649,378 new shares of common stock exchanged in August 1957 for the net assets and business of Clinton Chemical Co.

5. Under the Stock Option Plan, adopted by the shareholders on October 9, 1951, as amended, ten-year options were granted in 1952 through 1957 to certain officers and employees to purchase common shares of the Company at the market price on the granting dates. Unoptioned shares available for option amounted to 189,440 shares and 222,400 shares at June 30, 1958 and 1957, respectively. Information for the year with regard to the Plan is set forth below:

Option Price		Options (Number of Shares) Outstanding July 1, 1957	Changes During Year Issued	Exercised	Outstanding June 30, 1958
$42.375	(1952)	52,336		16,893	35,443
44.6666	(1953)	180,145	—	32,735	147,410
33.813	(1954)	103,940	—	2,760	101,180
49.3438	(1955)	46,786	—	375	46,411
50.875	(1956)	78,200	—	1,700*	76,500
48.9375	(1957)	—	31,200	500*	30,700
51.00	(1957)	—	7,500	—	7,500
	Total	461,407	38,700	54,963	445,144

*Includes options for 1,240 shares and 500 shares granted in 1956 and 1957, respectively, surrendered and cancelled in 1958.

6. The consolidated financial statements include net assets and earnings of subsidiaries operating abroad stated in terms of U. S. currency, as follows: net assets 1958, $92,107,446; 1957, $81,882,995; net earnings 1958, $13,128,615; 1957, $11,476,554.

7. Depreciation provided: $24,198,763 for 1958; $22,125,764 for 1957.

8. Reference is made to the Letter to Shareholders with respect to pending litigation.

REPORT *of independent auditors*

HASKINS & SELLS
CERTIFIED PUBLIC ACCOUNTANTS

FIRST NATIONAL BANK BUILDING
CINCINNATI 2

To the Board of Directors of
The Procter & Gamble Company:

We have examined the consolidated balance sheet of The Procter & Gamble Company and subsidiary companies as of June 30, 1958 and the related consolidated statements of earnings and earnings retained for use in the business for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying consolidated balance sheet and consolidated statements of earnings and earnings retained for use in the business present fairly the financial position of the companies at June 30, 1958 and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Haskins & Sells

August 6, 1958

SHAREHOLDERS' *meeting*

The next annual meeting of the shareholders will be held on Tuesday, October 14, 1958. The Management intends to solicit proxies for the annual meeting and it is expected that a notice of the meeting, together with a form of proxy and proxy statement, will be mailed to shareholders prior to September 27, 1958.

Commission's Exhibit No. 707A-P
Field reports of bleach producers

707 671

FIELD REPORT

Name: E. Bianchi

Firm Name: Aunt Lena Chemical Products Co.

Address: 3215 S. Princeton Avenue, Chicago, Illinois

Date: 2/5/59 Place of Interview: Above

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

Yes

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

House to house with a few grocery accounts.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Our own brand.

E. Bianchi
2/5/59

Charles W. Thurston
(Attorney-Adviser)

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 COMMISSION EXHIBIT NO. 707-A
IN THE MATTER OF Procter & Gamble
DATE 2/12/59 WITNESS
ACE REPORTING CO., Official Reporter
By

298X

FIELD REPORT

Name: Donald F. Husband

Firm Name: Barton Chemical Co.

Address: 1230 W. 46th Street, Chicago, Illinois

Date: 2/5/59 Place of Interview: Above

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

Yes

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

Grocery stores

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Both.

299X

Donald F. Husband

Charles W. Hinson
(Attorney-Advisor)

Ralph L. Rogers

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 EXHIBIT NO. 767-B

FIELD REPORT

Name: Donald E. Griffin

Firm Name: Donald E. Griffin

Address: 1946 W. 69th Street, Chicago, Illinois

Date: 2/5/59 Place of Interview: Above

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

No. I am a distributor.

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

Not applicable.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Not applicable.

Donald E. Griffin

Charles T. Thurow
(Attorney-Examiner)

Ralph W. Bergum

300X

FEDERAL TRADE COMMISSION
6901 — 207-C

FIELD REPORT

Name: Mrs. Vito Lonigro

Firm Name: Bleach-O Prod. Co. (Formerly Klor-X Prod. Co.)

Address: 5123 S. Leamington Avenue, Chicago, Illinois

Date: 2/5/59 Place of Interview: Above

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

I convert Chlorine into household bleach by dilution

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

House to house.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Not applicable.

Vito
Mrs. Lonigro
Bleach-O Prod. Co
(Klor-X Prod. Co.
Owner)

Charles V. Hutson
(Attorney Assistant)

Robert L. Pepplow

301X

FEDERAL TRADE COMMISSION
DOCKET 6901 ITEM 707-A

FIELD REPORT

Name: Earl R. Record

Firm Name: Record Bleach & Soap Co.

Address: 2327 S. St. Louis Avenue, Chicago, Illinois

Date: 2/5/59 Place of Interview: Above

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

No -- I convert and bottle it.

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

House to house -- a few stores.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Both.

Earl R. Record

(Attorney Advised)

Ralph W. Bingham

302X

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 EXHIBIT NO. 707-E

FIELD REPORT

Name: Daniel Schliefenheimer

Firm Name: Lilly White Products Co.

Address: 635 W. 47th Street, Chicago, Illinois

Date: 2/5/59 Place of Interview: Above.

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

No — we concentrate and bottle it.

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

House to house.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Not applicable.

Daniel Schliefenheimer

Charles W. Hasson
(Attorney Indicated)

R. W. Bergdoll

303X

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 EXHIBIT NO. 707-F

Field Report

Name: Mrs. William Sprawka

Firm Name: Sandis Products

Address: 3300 North Kilbourn, Chicago, Illinois

Date: February 6, 1959 **Place of Interview:** Above addr

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

We buy 18% concentrate and dilute it to 5¼%.

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

Some to home and a few grocers & 2 drug stores.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Our own brand.

Mrs Wm Sprawka

Charles Thirsen
(Attorney-adviser)

304X

Ruth M Burgtorf

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 COMMISSION EXHIBIT NO. 707-D

Field Report

Name: Julius Siskind

Firm Name: Sun-Ray Clore Products Co.

Address: 3233 West Potomac Street, Chicago, Illinois

Date: February 6, 1959 Place of Interview: Above address

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

No - sold out in January 1959. Before then I bought 12-14% concentrate and cut it to 5%

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

Sold house to house.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Not applicable.

(Attorney-Advocate) 305X

Robert D. Bergstrom

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 EXHIBIT NO. 717-H

Field Report

Name: C. M. Bell

Firm Name: The Brite-House Co.

Address: 1050 West Kinzie, Chicago, Illinois

Date: February 6, 1959 **Place of Interview:** Above addres

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

We bottle a liquid bleach for household use. We buy the liquid in concentrated form from another company.

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

We sell our household liquid bleach only thru wholesale distributors, not house to house.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Both.

306X

(Charles W. Thomas
(Attorney - above)

Charles W. Bratton

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 EXHIBIT NO. 707-L

ghtly Bound

Field Report

Name: Morton Herman

Firm Name: Morton Herman & Co.

Address: 157 West Wendell Street, Chicago, Illinois

Date: February 6, 1959 Place of Interview: Telephone (After unsuccessful personal calls)

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

We buy the chemicals and dilute it.

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

Chain stores.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Both < 10% our brand
90% private label

307X

Charlotte Thurston
(Attorney - Investigator)

Robert L. Pettis

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 EXHIBIT NO. 707-J

FIELD REPORT

Name: Orville J. Swartz

Firm Name: Orville J. Swartz Company

Address: 5217 Lake Street, Melrose Park, Illinois

Date: February 6, 1959 — Place of Interview: Telephone (After unsuccessful personal calls)

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

No - we produced an industrial bleach for a manufacturer, Alexander Chemical Corp.

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

Not applicable.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Not applicable.

308X

Charles S. Hanson
(Attorney-Examiner)

R. D. Allen Berglund

FEDERAL TRADE COMMISSION
6901
707-XX

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FIELD REPORT

Name: Mrs. Joyce Latino

Firm Name: Londra Bleach Products

Address: 2659 South St. Louis, Chicago, Illinois

Date: February 6, 1959 Place of Interview: Telephone (After unsuccessful personal calls)

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

Yes.

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

House to house

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Not applicable.

309X

(Attorney Advising)

FEDERAL TRADE COMMISSION
6901 787

Field Report

Name: Dominic Miraldi

Firm Name: Fidelity Bleach Co.

Address: 5238 West Washington Street, Chicago, Illinois

Date: February 6, 1959 **Place of Interview:** Telephone (After unsuccessful personal calls)

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

No - we convert it, i.e., we buy concentrate and cut it with water to a dilution of 5¼%.

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

Both.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Own brands.

310X

Charles W. Hudson
(Attorney-Advisor)

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 COMMISSION EXHIBIT NO. 70

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Field Report

Name: Walter J. Kendzior

Firm Name: Sunny White Products

Address: 2124 West Pierce Street, Chicago, Illinois

Date: February 6, 1959 Place of Interview: Telephone (After unsuccessful personal calls)

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?

We buy it in a Concentrate form and cut it down to household percentage.

2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?

House to house plus 2 grocery stores.

3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?

Own brand.

(Attorney-Adviser)

311X

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 EXHIBIT NO. 707-X

FIELD REPORT

Name: Emil J. Konrath

Firm Name: Quick Laboratories & Sales Co., Konco & Sons, and Filco Products

Address: 1341 East 75th Street, Chicago, Illinois

Date: February 6, 1959 Place of Interview: Telephone (After unsuccessful personal calls)

In re: Matter of Procter & Gamble
FTC Docket No. 6901

1. Do you manufacture a liquid bleach for household use?
No, don't manufacture but convert. Buy a 15% concentrate from Alexander Chemical Corp and dilute with water to 5% which is a household bleach solution.
2. If so, do you sell your household liquid bleach through grocery stores or by house to house delivery?
House to house
3. If your answer to 2 above is grocery stores, do you sell your own brand liquid bleach as contrasted to private label brands?
Not applicable.

312X

Charles W. Johnson
(Attorney Advisor)

Robert E. Bergquist

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 FIRM 707-0

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FEDERAL TRADE COMMISSION File No. 010 6901

FIELD REPORT

Name MEMORANDUM Official position

Firm name

Address

Date February 6, 1959 Place of interview

Several attempts were made on the above date to contact the C. A. Sacco Chemical Co., 1247 North Monticello Avenue, Chicago, Illinois, without success. These efforts were made by the undersigned in company with Robert W. Bergstrom, Attorney, and included both personal visits and telephone calls. The address is a personal residence. Mr. Sacco was not in, his availability was not known, and the woman on the premises was unable to furnish the requested information.

Respectfully submitted,

Charles W. Johnson
Attorney-Adviser

Robert W. Bergstrom

313X

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 COMMISSION EXHIBIT NO. 707-X

O-SO-WHITE PRODUCTS CO.
LAUNDRY SUPPLIES
3760-3768 WEST THIRTY-EIGHTH STREET
Telephone Virginia 7-1220
CHICAGO 32, ILL.

MAURICE VELVE
PRESIDENT

Commission's Exhibit No. 708
Letters from O-So-White Products Co.
February 2, 1959

Feb.2,1959

Federal Trade Commission,
Mr. Thomas A. Deveny, III,
Washington 25,D.C.

Dear Sir:

In regard to the information that you require I submit the following.

1. We do not manufacture bleach for household use.

2. We do not sell our bleach through grocery chains or by house to house.

3. We do not sell our bleach through grocery stores or by a private label.

I hope that this information is satisfactory.

Yours very truly,

Gerald F. Borden,Sec.

GFB/eh

314X

FEDERAL TRADE COMMISSION
DOCKET NO. 6961 COMMISSION'S EXHIBIT NO. 708
IN THE MATTER OF Private P. Sale
DATE 2/12/59 WITNESS
ACE REPORTING CO., Official Reporter
By

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CABLE ADDRESS "HYDROX" CHICAGO

CODES USED: LIEBERS, WESTERN UNION A. B. C. 5TH EDIT., BENTLEY'S

HYDROX CHEMICAL COMPANY

OF ILLINOIS

225-227 W. HURON STREET

CHICAGO

ROOMS 10

Commission's Exhibit No. 709
Letter from Hydrox Chemical Company,
February 2, 1959

February 2, 195[illegible]

Federal Trade Commission
Bureau of Litigation
Washington 25, D. C.

Attn: Thomas A. Deveny, III

Gentlemen:

We have your letter dated January 29, 1959 and we wish to advise that we do not manufacture a household liquid bleach at all.

If any further information is required, please advise.

Very truly yours

HYDROX CHEMICAL COMPANY

Dina Fiori
Sec'y.

DF ga

315X

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 COMMISSION'S EXHIBIT NO. 709
IN THE MATTER OF Proctor & Gamble
DATE 2/12/59 WITNESS
ACE REPORTING CO., Official Reporter
By

710(A) 12

CABLE ADDRESS "ASCO" PHILA.
A.B.C. CODE 5TH EDITION

AMERICAN STORES CO.

GENERAL OFFICES
124 N. FIFTEENTH STREET
PHILADELPHIA 2, PA.

FEDERAL TRADE COMMISSION
DOCKET No. 6901 EXHIBIT No. 710A
IN THE MATTER OF Procter & Gamble
DATE _____ WITNESS _____
REPORTER
Hearing Examiner order dated 3-27

Commission's Exhibit No. 710A-B
Bleach purchases by American Stores Co.

March 12, 1959

Thomas A. Deveny, III, Esquire
Trial Attorney
Federal Trade Commission
Bureau of Litigation
Washington 25, D. C.

Re: Procter & Gamble Co.,
Docket 6901

Dear Mr. Deveny:

I am furnishing herewith in accordance with your request, purchases by cases and dollar amount of Speedup, 101 and Clorox for the two periods January 1, 1957 through November 30, 1957 and January 1, 1958 through November 30, 1958.

January 1, 1957 through November 30, 1957

Quarts (12 to a case)		Amount
Speedup	1420 cases	$ 1,853.00
101	4220 cases	7,909.60
Clorox	8595 cases	15,858.15

Half Gallons (6 to a case)		Amount
Speedup	1848 cases	$ 2,346.00
101	5695 cases	9,827.52
Clorox	11605 cases	19,706.97

Gallons (4 to a case)		Amount
Speedup	2230 cases	$ 3,210
101	4370 cases	8,105.80
Clorox	10665 cases	19,501.47

316X

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7/6 (B) id

FEDERAL TRADE COMMISSION
Docket No. 6901 Complaint's Exhibit No. 710-B

Thomas A. Deveny, III, Esquire

March 12, 1959

January 1, 1958 through November 30, 1958

Quarts (12 to a case)		Amount
Speedup	- 1187 cases	$ 1,658.37
101	- 3690 cases	7,260.37
Clorox	- 9030 cases	20,127.10
Half Gallons (6 to a case)		**Amount**
Speedup	- 1683 cases	$ 2,285.16
101	- 5160 cases	9,384.74
Clorox	- 12345 cases	26,600.83
Gallons (4 to a case)		**Amount**
Speedup	- 1967 cases	$ 2,849.09
101	- 4468 cases	8,649.89
Clorox	- 11132 cases	25,107.07

I believe the foregoing gives you all of the information requested and I am sure you are aware of the fact that the information herein enclosed, as well as the prior information furnished to you by the Company, is of a confidential nature and is furnished solely in connection with the proceedings involving Procter & Gamble Company under Docket 6901, and for no other purpose.

Very truly yours,

317X

A. E. GILFILLAN

AEG:BA

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Respondent's Exhibit No. 64
The Cleveland Press—Cleveland Consumer Panel,
April-May-June 1958

Commodity Liquid Bleach — Report Period April, May, June, 1958

BRAND BOUGHT	VOLUME PURCHASED				Net Families Buying Quarterly
	Size of Package	Number Bought	Total Quarts	Percent of Total	
Commodity Total	Quarts	660	1862	100.0	260
Clorox	1	109	109	5.9	56
	2	76	152	8.2	58
	4	90	360	19.3	63
Active	4	69	276	14.8	18
Ex Cello	4	26	104	5.6	6
Roman Cleanser	1	25	25	1.3	12
	2	10	20	1.1	8
	4	20	80	4.3	15
Quality	4	25	100	5.4	4
White Cross	1	11	11	.6	7
	2	6	12	.6	5
	4	12	48	2.6	10
Sweet Clean	4	17	68	3.7	4
Miracle	4	15	60	3.2	2
Re Nu	4	12	48	2.6	3
Brilliant	4	12	48	2.6	1
Bright Sail	1	16	16	.9	7
	2	12	24	1.3	7
	4	2	8	.4	2
White Monday	1	9	9	.5	5
	2	10	20	1.1	6
	4	4	16	.9	2
Sana	4	11	44	2.3	2
Sim Ray	4	9	36	1.9	1
Sparkd	4	8	32	1.7	1
Other Brands	.5	2	1	-	1
	1	7	7	.4	2
	2	6	12	.6	3
	4	18	72	3.9	8
Brand Not Stated	4	11	44	2.3	3

Where Bought Percent of Total	A&P	Fisher	Kroger	Pick-N Pay	Food-town	Bi-Rite	I.G.A.	Square Deal	Eagle	Peyton	Stop-N Shop	Heinen	Mother Hubbard	No Store	Other Grocer
	13.3	7.5	5.9	8.5	3.7	.8	.4	1.7	1.6	.4	2.8	1.0	-	2.0	8.0

Other Places: Delivery 38.3; Other type 4.1

CLEVELAND PRESS CONSUMER PANEL OF 500 CUYAHOGA COUNTY HOMES - CONDUCTED BY WESTERN RESERVE UNIVERSITY

RX-69-A

Respondent's Exhibit No. 69A-Z
Tabulation of Private Label Bleaches

FEDERAL TRADE COMMISSION
DOCKET NO. 6924 EXHIBIT NO. 69-A
IN THE MATTER OF PROCTER & GAMBLE
DATE 1/9/67 WITNESS TRIMBLE
ACE REPORTING CO., Official Reporter
By MONICA

42	ADAIRS FOOD MARKETS	2	UPPER DARBY	PEN	ALBRO		
42	JANSSENS FAIRLAWN FOOD MKTS	2	HAVERFORD	PEN	ALBRO		
42	JOHNNYS FOOD MARKETS	2	GIBBSTOWN	NJ	ALBRO		
42	LOWRY A				ALBRO		
42	VAUGHAN & SMITTYS MARKETS	2	WILMINGTON	CON	ALBRO		
58	ALL AMERICAN MARKETS	3	MENLO PARK	CAL	ALL AMERICAN		
56	GREATER ALL AMERICAN MKT	6	DOWNEY	CAL	ALL AMERICAN		2½ yrs
56	ALPHA BETA FOOD MARKETS	29	LA HABRA	CAL	ALPHA BETA	Jefferson Mfg.	
64	FOOD TOWN INC	19	WASHINGTON	DC	APEX	Purex Corp.	
81	ASSOCIATED FOOD STORES COOP		JAMAICA L I	NY	ASSOCIATED	Blue Magic Inc.	
81	BLUE JAY MARKETS INC	3	SMITHTOWN	NY	ASSOCIATED		
81	COHEN ASSOCIATED STORES	2	EAST MEADOW	NY	ASSOCIATED	Rose-Lee	Private Label
81	DOUGLAS FOOD STORES INC	4	WOODHAVEN	NY	ASSOCIATED	"	"
81	GREENBERG & SONS SUPER FOOD	4	WEST ISLIP	NY	ASSOCIATED	"	"
81	KATZ ASSOCIATED STORES	1	BABYLON	NY	ASSOCIATED	"	"
81	LANGEN ASSOCIATED STORES	2	HEMPSTEAD	NY	ASSOCIATED	"	"
81	LONG ISLAND SUPER MARKETS	2	FREEPORT	NY	ASSOCIATED	"	"
81	MALLERS ASSOCIATED FOOD STO	3	WEST HEMPSTEAD	NY	ASSOCIATED	"	"
81	METRO SUPER MARKETS	3	FOREST HILLS	NY	ASSOCIATED	"	"
81	SCHORR ASSOCIATED MARKETS	2	BROOKLYN	NY	ASSOCIATED	"	"
81	SILVERCUP SUPER MARKETS	3	L I CITY	NY	ASSOCIATED	"	"
50	BANNER FOOD STORE		CHICAGO	IL	BANNER BOY	M. Hermans	20 yrs
56	BEACH GROCERY CO	3	LOS ANGELES	CA	BEACHS	Purex Corp.	3 yrs
42	PENN FRUIT CO	46	PHILADELPHIA	PEN	BEACON	Hood Chem.	
5	PIERCE S S CO	9	BOSTON	MAS	BEACON	P.W. Russell Co.	many yrs
58	EMBY FOODS INC	3	OAKLAND	CA	BEST BUY	Sam Tak	
37	KROGER CO THE		CINCINNATI	OH	BEST WHITE	Best Value Co. Cameron Chem. Co.	
56	BETTER FOOD MARKETS	5	LOS ANGELES	CA	BETTER FOOD	Lady's Choice	4 wks

85	BIG BEAR SUPER MARKETS	3	SAN DIEGO	CAL	BIG BEAR	Jefferson Beds
64	GREEN B & CO		BALTIMORE	MD	BIG VALUE	
64	SANITARY FOOD STORES	4	ALEXANDRIA	VIR	BIG VALUE	
5	BIG Y SUPER MARKET		CHICOPEE FALLS	MAS	BINGO BLEACH	
7	BELDENS SUPER MARKETS	2	HOUSTON	TEX	BLACK GOLD	
1	CLAYTONS INC	6	HOUSTON	TEX	BLACK GOLD	
1	CLOUDS QUALITY MARKETS	2	HOUSTON	TEX	BLACK GOLD	
1	GERLANDS SUPER MARKETS	4	HOUSTON	TEX	BLACK GOLD	
7	MORRIS SEWALL & CO		HOUSTON	TEX	BLACK GOLD	
1	RANDALLS INC	3	HOUSTON	TEX	BLACK GOLD	
1	SEWALL MORRIS & CO		HOUSTON	TEX	BLACK GOLD	
1	SIMMONS SUPER MARKETS INC	3	ROSENBERG	TEX	BLACK GOLD	
1	WILLIAMS SUPER VALU INC	3	BEAUMONT	TEX	BLACK GOLD	
37	ACRAS MARKETS	2	COVINGTON	KY	BLUE GRASS	
37	SCHMIDT GEO WHO GROC CO		COVINGTON	KY	BLUE GRASS	
42	HAZELTON WHOLESALE GROCERY		PHILADELPHIA	PEN	BLUE KITCHEN	
42	MAXWELLS FOOD MARKETS	2	HAZELTON	PEN	BLUE KITCHEN	
50	BONNIE BEE SUPER FOOD MARTS	2	MELROSE PARK	ILL	BONNIE BEE	
56	BORDERS MARKETS	2	REDONDO BEACH	CAL	BORDERS	
58	BOYS MARKETS INC THE	6	LOS ANGELES	CAL	BOYS	
1	GREAT A & P TEA CO				BRIGHT SAIL	
13	GREAT A & P TEA CO THE				BRIGHT SAIL	
14	GREAT A & P TEA CO THE				BRIGHT SAIL	
25	GREAT A & P TEA CO THE				BRIGHT SAIL	
30	GREAT A & P TEA CO THE				BRIGHT SAIL	
76	GREAT A & P TEA CO THE				BRIGHT SAIL	
89	GREAT A & P TEA CO THE				BRIGHT SAIL	
77	GREAT A & P TEA CO THE		ATLANTA	GA	BRIGHT SAIL	

SIXIX

FEDERAL TRADE COMMISSION
DOCKET NO. 8781 EXHIBIT NO. 69-B

RK.69-C mfg dimen

FEDERAL TRADE COMMISSION 69C

34	GREAT A & P TEA CO THE		BALTIMORE	MD	BRIGHT SAIL		10 yrs
95	GREAT A & P TEA CO THE		BIRMINGHAM	ALA	BRIGHT SAIL		
5	GREAT A & P TEA CO THE		BOSTON	MAS	BRIGHT SAIL	J. F. Prescott	Several yrs
81	GREAT A & P TEA CO THE		BRONX NEW YORK	NY	BRIGHT SAIL	Wood Chem	Since 8/1/47
81	GREAT A & P TEA CO THE		BROOKLYN	NY	BRIGHT SAIL	"	"
91	GREAT A & P TEA CO THE		BUFFALO	NY	BRIGHT SAIL		
50	GREAT A & P TEA CO THE		CHICAGO	ILL	BRIGHT SAIL		Many yrs
82	GREAT A & P TEA CO THE		CHARLOTTE	NC	BRIGHT SAIL	Lewis Prod Co	Since 1939
87	GREAT A & P TEA CO THE		CHARLOTTE	NC	BRIGHT SAIL	Wood Chem	20 to 26 yrs
62	GREAT A & P TEA CO THE		CLEVELAND	OHI	BRIGHT SAIL		
48	GREAT A & P TEA CO THE		COLUMBUS	OHI	BRIGHT SAIL		
5	GREAT A & P TEA CO THE		CRANSTON	RI	BRIGHT SAIL	J. F. Prescott	Several yrs
10	GREAT A & P TEA CO THE		DALLAS	TEX	BRIGHT SAIL		
90	GREAT A & P TEA CO THE		DETROIT	MIC	BRIGHT SAIL		
81	GREAT A & P TEA CO THE		GARDEN CITY	NY	BRIGHT SAIL		Many yrs
96	GREAT A & P TEA CO THE		GRAND RAPIDS	MIC	BRIGHT SAIL	Wood Chem	Since 8/1/47
37	GREAT A & P TEA CO THE		INDIANAPOLIS	IND	BRIGHT SAIL	Lewis Prod Co.	
73	GREAT A & P TEA CO THE		INDIANAPOLIS	IND	BRIGHT SAIL	Lewis Prod Co	
61	GREAT A & P TEA CO THE		KANSAS CITY	KAN	BRIGHT SAIL		
75	GREAT A & P TEA CO THE		LOUISVILLE	KY	BRIGHT SAIL		
68	GREAT A & P TEA CO THE		MEMPHIS	TEN	BRIGHT SAIL		Last few yrs
81	GREAT A & P TEA CO THE	4 1750	NEW YORK	NY	BRIGHT SAIL		
81	GREAT A & P TEA CO THE		PATERSON	NJ	BRIGHT SAIL	Wood Chem	Since 8/1/47
42	GREAT A & P TEA CO THE		PHILADELPHIA	PEN	BRIGHT SAIL	"	"
5	GREAT A & P TEA CO THE		PORTLAND	ME	BRIGHT SAIL	"	"
51	GREAT A & P TEA CO THE		RICHMOND	VIR	BRIGHT SAIL	J. F. Prescott	Several yrs
65	GREAT A & P TEA CO THE		RICHMOND	VIR	BRIGHT SAIL		
78	GREAT A & P TEA CO THE		SCRANTON	PEN	BRIGHT SAIL	J. F. Prescott	

RX-69-B Mfg. Equation 4

5	GREAT A & P TEA CO THE		SPRINGFIELD	MAS	BRIGHT SAIL	J.L. Prescott	Issued 1900
79	GREAT A & P TEA CO THE		ST LOUIS	MO	BRIGHT SAIL		Prem 10-year
41	GREAT A & P TEA CO THE		TOLEDO	OHI	BRIGHT SAIL		
62	GREAT A & P TEA CO THE		YOUNGSTOWN	OHI	BRIGHT SAIL		
64	JUMBO FOOD STORES INC	4	WASHINGTON	DC	CAPITAL		
64	WASHINGTON WHO GRO CO		WASHINGTON	DC	CAPITAL		
56	CARLS RANCH MARKETS	7	LOS ANGELES	CAL	CARLS	Valley Farms	Appears - mar
73	COX SUPER MARKETS	2	ALEXANDRA	IND	CHLORITE		
37	EAVEY CO THE		XENIA	OHI	CHLORITE		
73	EAVEY HENRY J INC	3	RICHMOND	IND	CHLORITE		
37	FIVE POINTS SUPER MARKET	2	HAMILTON	OHI	CHLORITE		
73	KUTTERS SUPER MARKETS INC	2	ROCHESTER	IND	CHLORITE		
37	MC GEE CHARLES & SONS	2	MIDDLETOWN	OHI	CHLORITE		
79	MC KNIGHT KEATON GROCER CO		CAIRO	ILL	CHLORO SAN		
79	MC KNIGHT KEATON GROCER CO		SIKESTON	MO	CHLORO SAN		
48	MIDLAND GROCERY CO THE				CLARION		
56	CLARKS MARKETS	7	LOS ANGELES	CAL	CLARK	Jefferson Mfg	
58	CLARK MARKETS	4	MORAGA	CAL	CLARKS	Evans Blend Pipe	
56	GREAT A & P TEA CO THE	29	LOS ANGELES	CAL	CLOES	Jefferson Mfg	
79	CLOVER FARM STORES		ST LOUIS	MO	CLOVER FARM	Sage Pipe	
79	KRENNING SCHLAPP GROC CO		ST LOUIS	MO	CLOVER FARM		
62	COOP SUPER MARKETS	2	AKRON	OHI	CO OP		Abnd 6 mos
34	GREENBELT CONSUMER SERVICES	4	GREENBELT	MD	CO OP		
64	GREENBELT CONSUMER SERVICES	4	GREENBELT	MD	CO OP		
34	NATIONAL COOPERATIVES INC		ALBERT LEA	MIN	CO OP		
74	PENINSULA CO OP INC	2	HAMPTON	VIR	CO OP		12 year
64	ROCHDALE COOPERATIVE INC	3	WASHINGTON	DC	CO OP		
62	TRACY & AVERY CO		MANSFIELD	OHI	CO OP		

FEDERAL TRADE COMMISSION
RECEIVED 1961 EXHIBIT NO. 695

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						Mfg.	Remarks
	5 UNITED COOPERATIVE SOCIETY	4	FITCHBURG	MAS	CO OP		Annual yrs
	5 UNITED COOP SOCIETY OF MAYN	3	MAYNARD	MAS	CO OP		Annual yrs
	56 COLES MARKETS INC	7	LONG BEACH	CAL	COLES	Purex Corp.	About 12 mos
	57 COLUMBIA FOOD CO	9	PORTLAND	ORE	COTTAGE		
	57 ERICKSON SUPER MARKETS	13	SALEM	ORE	COTTAGE		
	57 GRIGGS SUPERIOR FOODS	3	KLAMATH FALLS	ORE	COTTAGE		
	57 HALLORYS Y MARKETS	2	KLAMATH FALLS	ORE	COTTAGE		
	57 MARKET BASKET	2	KLAMATH FALLS	ORE	COTTAGE		
	57 OREGON FOOD STORES INC	4	KLAMATH FALLS	ORE	COTTAGE		
	57 PHILLIPS BILL MARKETS	2	ST HELENS	ORE	COTTAGE		
	56 CRAWFORDS MARKETS	5	ALHAMBRA	CAL	CRAWFORDS	Jeffrees Mfg	
	56 DALES MARKETS	3			DALES	Dilly Items	
	57 MEYERS FRED INC	16	PORTLAND	ORE	DAN DEE		
XEX	81 DANS SUPREME SUPER MARKETS	16	HEMPSTEAD	NY	DANS	Rose-Lee	Price to Wilkin
	56 COLES MARKETS	2	BALDWIN PARK	CAL	DEL HAVEN		
	37 GALLENSTEINS MARKET	2	ERLANGER	KY	DEL HAVEN	Comm Chem Co.	
	67 HYDENS	3	AUSTIN	TEX	DEL HAVEN		Total purch 1965
	45 LINDE B O & SONS		BATON ROUGE	LA	DEL HAVEN		About 17-18
	37 THIEMANN BROS INC		CINCINNATI	OHI	DEL HAVEN		
	67 WAKLINS SUPER MARKETS	2	AUSTIN	TEX	DEL HAVEN		Total purch 1965
	73 WALTS SUPER MARKETS	2	INDIANAPOLIS	IND	DEL HAVEN		
	58 DICKS SUPER MARKETS	5	SAN JOSE	CAL	DICKS	Purex Corp	About 13 yrs
	56 DORRS MARKETS	2	INGLEWOOD	CAL	DORRS	Wally Items	3 yrs
	37 ENSLENS DOT FOOD STORES	2	FORT THOMAS	KY	DOT	Best Lather Co Comm Chem Co	
	37 JANSZEN CO THE		CINCINNATI	OHI	DOT		
	37 WESTENDORF J A	2	LOCKLAND	OHI	DOT	Best Lather Co Comm Chem Co	
	62 E Z FINER FOODS	3	YOUNGSTOWN	OHI	E Z WHITE	E J White Chem	
	62 HULLS FOOD CENTERS	2	YOUNGSTOWN	OHI	E Z WHITE		

FEDERAL TRADE COMMISSION
DOCKET NO. 8917 EXHIBIT NO. 67-E

						Mfg	Duration
62	LAZARS MARKETS	4	YOUNGSTOWN	OHI	E Z WHITE	E.Z. White Chem.	
62	MACALIS DELUXE MARKETS	3	NILES	OHI	E Z WHITE	"	
62	TOTHS FOOD MARKETS	3	YOUNGSTOWN	OHI	E Z WHITE	"	
5	BROCKTON PUBLIC MARKET INC	7	BROCKTON	MAS	ECLIPSE		Several yrs.
34	EDDIES FOOD MARKETS		BALTIMORE	MD	EDDIES		
34	INDEGRO INC	18	BALTIMORE	MD	EDDIES		10 yrs
56	EL RANCHO MARKETS	3			EL RANCHO	Jeffreys Mfg	
5	BLAIRS FOODLAND INC	2	ROXBURY	MAS	ELM FARM	J.E. Prescott	Several yrs
5	COLUMBIA MARKETS	3	PORTLAND	ME	ELM FARM	"	"
5	EDWARDS SUPER MARKET	3	BIDDEFORD	ME	ELM FARM	"	"
5	ELM FARM FOOD CO	34	BOSTON	MAS	ELM FARM	"	5 yrs.
5	LODGENS MARKETS	5	HYDE PARK	MAS	ELM FARM	"	Many yrs.
79	LITCHFIELD GROCER CO		LITCHFIELD	ILL	EMPIRE	J.F. Eckrich	
59	A & B THRIFTWAY	2	EVERETT	WAS	ENERGY	Puritan Corp	First used 11-65
59	A & M THRIFTWAY	2	TACOMA	WAS	ENERGY	"	"
20	ARAPAHOE STORES OF PUEBLO	9	PUEBLO	COL	ENERGY	Tiller Corp	1965
59	ARTS FOOD CENTERS	4	SEATTLE	WAS	ENERGY	Puritan Corp	First used 11-65
56	ARVOS MARKETS	3	NORWALK	CAL	ENERGY		
20	ASSOCIATED GROCERS		DENVER	COL	ENERGY		
77	ASSOCIATED GROCERS COOP		EAST POINT	GA	ENERGY		
59	ASSOCIATED GROCERS INC		SEATTLE	WAS	ENERGY		
61	ASSOCIATED WHOLESALE GRO IN		SPRINGFIELD	MO	ENERGY		
79	ASSOCIATED GROCER CO		ST LOUIS	MO	ENERGY		
77	BATEMANS FOOD STORES	2	MACON	GA	ENERGY		
58	BIG M MARKETS INC	2	SAN MATEO	CAL	ENERGY		
61	BORUMS SUPER MARKETS	3	COFFEYVILLE	KAN	ENERGY		About 5 yrs
37	BRENNERS SUPER MARKET	2	CINCINNATI	OHI	ENERGY		
59	BROADWAY THRIFTWAY	2	ABERDEEN	WAS	ENERGY	Puritan Corp	First used 11-65

FEDERAL TRADE COMMISSION DOCKET NO. 8787 EXHIBIT NO. 69-F

RX-69-D

Mfg

Duration

FEDERAL TRADE COMMISSION
DOCKET NO. 8881 EXHIBIT NO. 69D

	58	BROADWAY MARKETS	3	REDWOOD CITY	CAL	ENERGY	
	77	BUEHLER SUPER MARKETS		ATLANTA	GA	ENERGY	since 1967
	68	BY RYTE STORES	2	MEMPHIS	TEN	ENERGY	
	20	CASPAR COMMISSARY INC	3	CASPER	WYO	ENERGY	Kitts Corp.
	93	CENTRAL GROCERY CO	2	AMARILLO	TEX	ENERGY	
	20	CHETS MASTER MARKET	3	PUEBLO	COL	ENERGY	Kitts Corp.
	20	CITY MARKET	2	SALIDA	COL	ENERGY	"
	56	CRACKER BARREL	2	GLENDALE	CAL	ENERGY	
	93	CUT RATE GROCERY	3	DUMAS	TEX	ENERGY	
	59	DIETZENS THRIFTWAY	2	YAKIMA	WAS	ENERGY	Lucas Corp. Tried unsuccessfully
	58	DON QUICK STORES INC	2	STOCKTON	CAL	ENERGY	
	58	DRAEGERS SUPER MARKETS INC	3	SAN MATEO	CAL	ENERGY	
	37	DRUMMOND & SLOAN GROCERY CO	4	DAYTON	OHI	ENERGY	
XXX	56	EL RANCHO MARKETS INC	2	ARCADIA	CAL	ENERGY	
XXX	59	ENNEN THRIFTWAY MARKET	2	BELLINGHAM	WAS	ENERGY	Lucas Corp. Tried unsuccessfully
	56	ESKO INC	3	LOS ANGELES	CAL	ENERGY	
	56	FAIRWAY MARKETS	2	SANTA BARBARA	CAL	ENERGY	
	59	FERGIES PARK N SHOP INC	4	MOUNT VERNON	WAS	ENERGY	Lucas Corp. Tried unsuccessfully
	78	FIRESTINES GROCERY	2	WEST PITTSTON	PEN	ENERGY	Lucas Corp.
	56	FOOD RANCH	2	SANTA ANA	CAL	ENERGY	
	56	FOSTER PARK MARKET	2	VENTURA	CAL	ENERGY	
	58	4 STAR DRIVE IN MARKET	2	MERCED	CAL	ENERGY	
	20	FREDS TOWN & COUNTRY MARKET	2	CASPER	WYO	ENERGY	Kitts Corp.
	59	FULLERS MARKET BASKETS	2	CHEHALIS	WAS	ENERGY	Lucas Corp. Tried unsuccessfully
	58	GAINES MARKETS	5	STOCKTON	CAL	ENERGY	
	59	GERRITSENS MARKETS	3	YAKIMA	WAS	ENERGY	Lucas Corp. Tried unsuccessfully
	56	HUGHES MARKETS	6	SHERMAN OAKS	CAL	ENERGY	
	35	INDEPENDENT WHO GROC		BILLINGS	MON	ENERGY	Lucas Corp. Tried unsuccessfully

Mfg. Question

FEDERAL TRADE COMMISSION
DOCKET NO. 6851 COMPLAINT EXHIBIT NO. 69-H

56	JORDANOS INC	5	SANTA BARBARA	CAL	ENERGY		
56	K & K MARKETS	2	DOWNEY	CAL	ENERGY		
59	LAURENTS SUPER MARKETS	2	YAKIMA	WAS	ENERGY	Purex Corp	Trial and 1/65
59	LEES SHURFINE MARKETS	2	CLARKSTON	WAS	ENERGY	"	"
56	LOCKYERS GROCERY	2	LONG BEACH	CAL	ENERGY		
57	LOGSDONS WHITE VILLA MKTS	2	HAMILTON	OHI	ENERGY		
58	LONGFELLOWS MARKETS	2	REDDING	CAL	ENERGY		Same 1967
58	LOYDS FOOD BASKET	2	PORTERVILLE	CAL	ENERGY		
85	M & S FOODS	2	SAN DIEGO	CAL	ENERGY	Purex Corp	
77	MATTHEWS SUPER MARKETS	2	ATLANTA	GA	ENERGY		
56	MAYFLOWER MARKETS	2	MONROVIA	CAL	ENERGY		
93	MC COLLUM FOOD STORES	2	AMARILO	TEX	ENERGY		
56	MC COWANS MARKETS	2	SAN PEDRO	CAL	ENERGY		
77	MOZLEY T N & SONS	2	DOUGLASVILLE	GA	ENERGY		Same 1967
59	NATIONAL RETAILERS OWNED GR		CHICAGO	ILL	ENERGY		
77	NATTS SUPER MARKETS	2	COLUMBUS	GA	ENERGY		Same 1967
58	NICKELS PAYLESS FOOD STORES	4	FARMERSVILLE	CAL	ENERGY		
58	OCHINEROS SHOPPING CENTERS	2	FRESNO	CAL	ENERGY		
93	OLDHAM GROCERY & MARKET	3	AMARILLO	TEX	ENERGY		
20	OXFORDS MARKETS	2	CANON CITY	COL	ENERGY	Kuhlman Corp	1966
93	PANHANDLE ASSOCIATED GROCER		AMARILLO	TEX	ENERGY		
59	PARK N SHOP	2	TACOMA	WAS	ENERGY	Purex Corp	Trial and 1/65
42	PEN MAR GROCERY CO	3	HANOVER	PEN	ENERGY		
20	PENNY SAVER SUPER MARKETS	2	DENVER	COL	ENERGY	Kuhlman Corp	1966
77	PERRY SUPER MARKETS	2	ATLANTA	GA	ENERGY		Same 1967
61	POLICE BROS GROCERY	4	ARMA	KAN	ENERGY		Closed 5 yrs
93	PUT & TAKE FOOD STORES	3	AMARILLO	TEX	ENERGY		
93	QUALITY FOOD STORES	2	AMARILLO	TEX	ENERGY		

							Mfg.	Quantico
	58	RALEYS FOOD STORES		SACRAMENTO	CAL	ENERGY		
	59	RALPHS FOOD CENTER	2	OLYMPIA	WAS	ENERGY	Purex Corp.	Final mid 1960
	61	RAMEY SUPER MARKETS	2	SPRINGFIELD	MO	ENERGY		About 5 yrs.
	56	RANKINS INC	4	TUJUNGA	CAL	ENERGY		
	59	RAYS SUPER MARKETS INC	4	SEATTLE	WAS	ENERGY	Purex Corp.	Final mid 1965
	37	REMKES MARKETS	2	COVINGTON	KY	ENERGY		
	97	ROGHAARS FOOD CENTERS	1	SALT LAKE CITY	UTA	ENERGY		4/59
	58	ROSE BROS MARKETS	4	QUINCY	CAL	ENERGY		Since 1957
	20	RUDYS INC	3	SIDNEY	NEB	ENERGY	Tidex Corp.	
	58	SALTERS PACIFIC FOOD MKTS	2	MERCED	CAL	ENERGY		
	56	SANTA CRUZ MARKETS	3	VENTURA	CAL	ENERGY		
	20	SAVE A NICKEL STORES	2	CASPER	WYO	ENERGY	Tidex Corp.	
	56	SAVEMART MARKETS	2	GLENDALE	CAL	ENERGY		
	37	SAWAYS FRENCH MARKETS	3	DAYTON	OHI	ENERGY		
XXXX	59	SERV-U MARKETS	3	SEATTLE	WAS	ENERGY	Purex Corp.	Final mid 1965
	56	SHOPRIGHT MARKETS INC	3	CHINO	CAL	ENERGY		
	58	SIERRA FOODLAND	2	FRESNO	CAL	ENERGY		
	77	SIMPSONS FOOD TOWN SUPER MK	3	ATLANTA	GA	ENERGY		Since 1957
	20	SMILING SEBERNS	2	DENVER	COL	ENERGY	Tidex Corp.	
	68	STANLEYS BY RYTE STORES	2	MEMPHIS	TEN	ENERGY		
	97	STIMSONS INC	4	OGDEN	UTA	ENERGY		
	59	SUMNER THRIFTWAY	2	SUMNER	WAS	ENERGY	Purex Corp.	Final mid 1965
	20	SUPER SAVER MARKETS	3	DENVER	COL	ENERGY	Tidex Corp.	1956
	56	SURLOWS MARKETS	2	LONG BEACH	CAL	ENERGY		
	59	T B & M SUPER MARKETS INC	4	BREMERTON	WAS	ENERGY	Purex Corp.	Final mid 1965
	59	THRIFTY FOODS	4	MOUNT VERNON	WAS	ENERGY	"	"
	20	TIEMAN FOOD MARKETS INC	2	FORT MORGAN	COL	ENERGY	Tidex Corp.	
	59	UDDENBERG THRIFTWAY MARKETS	2	GIG HARBOR	WAS	ENERGY	Purex Corp.	Final mid 1965

FEDERAL TRADE COMMISSION EXHIBIT NO. 69

RX-69-J 10

m/f Lorain

58	UNITED GROCERS		SAN FRANCISCO	CAL	ENERGY	
56	V & S MARKET	2	SANTA MONICA	CAL	ENERGY	
58	VIRGILS FOOD MARKETS	2	SAN CARLOS	CAL	ENERGY	
37	WHITE VALLA GROCERY		CINCINNATI	OHI	ENERGY	
77	WHITEMANS SUPER MARKETS	2	ATLANTA	GA	ENERGY	
93	WHITEWAY FOOD STORES	4	AMARILLO	TEX	ENERGY	
56	WILLIAMS BROS MARKETS	3	SANTA MARIA	CAL	ENERGY	
78	WYOMING VALLEY DIST CO		WILKES BARRE	PEN	ENERGY	
42	YORKTOWNE WHO GROCERY		PHILADELPHIA	PEN	ENERGY	
61	BOOGART SUPPLY CO INC	12	CONCORDIA	KAN	EX OX	Shawnee Book
98	BOOGART SUPPLY CO		CONCORDIA	KAN	EX OX	"
61	HI WAY MARKET	3	SOLOMON	KAN	EX OX	"
56	F & W MARKETS	3	LONG BEACH	CAL	F & W	Times Leve. 3 or 4 yrs
81	MICHAELS FAIR MART FOOD ST	11	BROOKLYN	NY	FAIR MART	Pinnacle Book
58	FAMOUS FOOD MARKETS		SACRAMENTO	CAL	FAMOUS FOOD	
58	GENERAL FOOD MARKET	13	SACRAMENTO	CAL	FAMOUS FOOD	Sam. Val.
57	HUDSON HOUSE INC		ALBANY	ORE	FINER	
57	HUDSON HOUSE INC		BEND	ORE	FINER	
57	HUDSON HOUSE INC		LONGVIEW	WAS	FINER	
57	HUDSON HOUSE INC		PORTLAND	ORE	FINER	
57	HUDSON HOUSE INC		ROSEBURG	ORE	FINER	
57	HUDSON HOUSE INC		THE DALLES	ORE	FINER	
57	IRISH SWARTZ CO	5	EUGENE	ORE	FINER	
57	STEVES FOOD STORES	2	EMPIRE	ORE	FINER	
57	TOPS ALL FOODS INC	3	PORTLAND	ORE	FINER	
57	ZIMMERMANS 12 MILE STORE	2	GRESHAM	ORE	FINER	
56	FINE MARKETS	3			FINEX	Sales & Marion Book
56	CUMMINGS MARKET INC		LYNWOOD	CAL	FOOD GIANT	

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						Mfg.	Insurance
56	FOOD GIANT MARKETS	6			FOOD GIANT	Jefferson Mfg.	
56	FOOD HOUSE MARKETS	4	LOS ANGELES	CAL	FOOD HOUSE	Dilly Adams	1 yr.
56	FOODLAND MARKETS	2	BELL GARDENS	CAL	FOODLAND	Dilly Adams	2 yrs.
56	FOODS CO	3	LOS ANGELES	CAL	FOODS CO	Jefferson Mfg.	1 yr.
56	FOX MARKETS	13	LOS ANGELES	CAL	FOX	Jefferson Mfg.	
34	FOOD FAIR				FYNE TEX		
34	FOOD FAIR STORES INC		BALTIMORE	MD	FYNE TEX		10 yrs
81	FOOD FAIR STORES INC		LINDEN	NJ	FYNE TEX	J.B. Bucett	Brice & Wiley
74	FOOD FAIR OF PHILA	3	NORFOLK	VIR	FYNE TEX		
42	FOOD FAIR STORES	265	PHILADELPHIA	PEN	FYNE TEX	Bancroft Insurance Agency Lansing Bldg.	
42	DIAMOND SUPER MARKETS	2	HAZELTON	PEN	GARDEN		
42	GREAT LEOPARD MARKET CORP	2	CHESTER	PEN	GARDEN		
42	LERNER MARKETS INC	10	PHILADELPHIA	PEN	GARDEN		
42	LITTLE BEAR SUPER MARKETS	3	MOUNT CARMEL	PEN	GARDEN		
42	PERLOFF BROS				GARDEN		
42	TERMINAL SUPER MARKETS INC	2	UPPER DARBY	PEN	GARDEN		
56	GATEWAY STORES INC	6	LOS ANGELES	CAL	GATEWAY	Jefferson Mfg.	
61	BALLS SUPER MARKETS	2	KANSAS CITY	KAN	GLO X	Sears Olivier	6 mos.
61	GREENHILLS SUPER MARKETS IN	4	ST JOSEPH	MO	GLO X	"	"
61	JUSTRITE SUPER STORES INC	2	KANSAS CITY	MO	GLO X	"	"
61	KANSAS SERVICE GROCERS		KANSAS CITY	KAN	GLO X		
79	KROGER CO THE		ST LOUIS	MO	GLO X	Sears Olivier	10 & 2 yrs
61	RILEYS MASTER MARKETS	4	KIRKSVILLE	MO	GLO X	Sears Olivier	6 mos
62	EVERGREEN FOOD STORES	2	LORAIN	OHI	GOLD STAR	A-L Co.	
62	GOLDBERG FOOD STORES	3	LORAIN	OHI	GOLD STAR	"	
62	JACOBY BROS	2	LORAIN	OHI	GOLD STAR	"	
62	POLANSKYS MARKETS	2	LORAIN	OHI	GOLD STAR	"	
50	GOLDBLATT BROS INC	17	CHICAGO	ILL	GOLDBLATTS BOND	Chester & Hunter Elsworth	Lloyds

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						Mfg.	Duration
62	GOLDEN DAWN FOODS		SHARON	PEN	GOLDEN DAWN		
62	PATTONS MARKET	2	HUBBARD	OHI	GOLDEN DAWN		
58	GREEN SPOT FOOD STORES	2	STOCKTON	CAL	GREEN SPOT	Lane Vet	
61	DURHAMS MARKETS	2	ANDERSON	MO	GRIFFINS		
99	GRIFFIN GROCERY CO		MUSKOGEE	OKL	GRIFFINS		
81	GRISTEDE BROS INC	123	NEW YORK	NY	GRISDALE	J. L. Prescott	Prior to 8/1/69
57	BERGS INC	4	SALEM	ORE	HI POWER		
57	EMERYS IGA STORES	4	FLORENCE	ORE	HI POWER		
57	H & L SERV U MARKETS INC	2	GLADSTORE	ORE	HI POWER		
57	HALLS WALDPORT PUBLIC MARKE	2	WALDPORT	ORE	HI POWER		
1	SEARCHS FOOD STORES	9	WHITEHALL	ILL	HI POWER		
79	WETTERAU GROCERY CO		ST LOUIS	MO	HI POWER	Purex Corp.	2 year
81	HILLS SUPERMARKETS	2	FARMINGDALE	NY	HILLBRITE	J. L. Prescott	Prior 8/1/69
56	HIRAMS MARKETS	4	LOS ANGELES	CAL	HIRAMS	Jeffcom Mfg.	
50	HOLLES & CO		CHICAGO	ILL	HOLLES		
50	LEVINES GROCERY		CHICAGO	ILL	HOLLES	Bailey Chem.	
56	STATER BROS MARKETS	25			HOUSEHOLD	Purex Corp.	
44	CANBELL HOLTON & CO		BLOOMINGTON	ILL	HY CLO		
44	JOHNSTON SUPER MARKETS	4	SHELBYVILLE	ILL	HY CLO	Eskimo Prod.	
44	KROGER CO THE		PEORIA	ILL	HY CLO	"	Approx. 24 to 2 year
61	BEATY GROCERY CO INC		ST JOSEPH	MO	HY KLAS		
61	BEATYS HY KLAS FOOD STORES	5	ST JOSEPH	MO	HY KLAS		
61	DRIVE IN SUPER MARKETS	2	ST JOSEPH	MO	HY KLAS		
61	FREEMANS GROCERY & LOCKERS	3	EASTON	MO	HY KLAS		
61	HERRIGAN SUPER MARKETS	3	GALLATIN	MO	HY KLAS		
61	HILLERS HY KLAS STORES	2	SABETHA	KAN	HY KLAS		
61	PAULS MARKETS	2	BELLEVILLE	KAN	HY KLAS		
61	RAYS SUPER MARKET	2	ATCHISON	KAN	HY KLAS		

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Mfg. Questions

61	RITEWAY STORES	2	GRANT CITY	MO	HY KLAS		
30	SUPER DUPER INC	3	OMAHA	NEB	HY KLAS		
61	TURNERS HY KLAS FOOD STORES	2	ST JOSEPH	MO	HY KLAS		
57	SAVINGS CENTER STORE	2	SALEM	ORE	HY POWER		
61	SAFEWAY STORES INC		KANSAS CITY	MO	HY PRO		
62	A & S FOOD STORES	4	STEUBENVILLE	OHI	IDEAL	Ideal Ext.	
62	POOLES MARKETS	4	STEUBENVILLE	OHI	IDEAL	"	
56	LITTLE GIANT FOOD STORES	2	LONG BEACH	CAL	IRIS		
56	SMART & FINAL IRIS CO		LOS ANGELES	CAL	IRIS		
56	THRIFTIMART STORES	50			IRIS	Jefferson Mfg.	
37	GERSHOWS SUPER MARKETS INC	7	DAYTON	OHI	JACK & JILL	Miami Bed. Chem. Co.	
37	KROGER CO THE		DAYTON	OHI	JACK & JILL	"	
37	LIBERAL MARKETS INC THE	19	DAYTON	OHI	JACK & JILL	"	
73	MARSH FOODLINERS INC	26	YORKTOWN	IND	JACK & JILL	"	
73	NATIONAL TEA CO		INDIANAPOLIS	IND	JACKSON SPECIAL	Eclipse Paper	
73	STANDARD GROCERY CO		INDIANAPOLIS	IND	JACKSON SPECIAL		
25	CENTRAL MARKETS INC	19	SCHENECTADY	NY	JESSO	J. L. Prescott	
56	COMMUNITY MARKETS	4	BURBANK	CAL	JIM & GILS	Coleman Corp.	2 yrs.
56	JIM DANDY MARKETS	9	LOS ANGELES	CAL	JIM DANDY	Thurman Mfg.	
56	JIMS MEATS & FINE FOODS	2	WHITTIER	CAL	JIMS	"	1 year
62	ZACKS ATOMIC SUPER MARKET	2	CLEVELAND	OHI	JONES	Dom. Rel. Co	
79	GENERAL GROCERY CO		ST LOUIS	MO	JUST RIGHT	Sapp Electric	
93	ALEXANDER SUPER MARKETS	4	EUNICE	NM	KALEX	Kendall Ind. Belts Co	
93	BOBS DAY & NIGHT SUPER STOR	2	LUBBOCK	TEX	KALEX	"	
93	ELLISONS GROCERY & MARKETS	4	HOBBS	NM	KALEX	"	
93	FOODWAY SUPER MARKETS	2	AMARILLO	TEX	KALEX	"	
93	H & J FOOD BASKETS	3	ARTESIA	NM	KALEX	"	
54	HOWARDS PIGGLY WIGGLY STORE	5	MAGNOLIA	ARK	KALEX	"	also

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Mfg. Manufacturer

93	KIMBELL FOOD PROD CO		FORT WORTH	TEX	KALEX		
54	LINGOS STORES	2	HOT SPRINGS	ARK	KALEX	Kimbell Food Prod. Co.	2/69
67	PLEMONS FOODTOWN	2	CORPUS CHRISTI	TEX	KALEX	"	Final Paid. 1966
93	TAYLORS MARKETS	3	AMARILLO	TEX	KALEX	"	
93	THRIFTY WAY FOOD STORES	3	CARLSBAD	NM	KALEX	"	
93	WHITES SUPER MARKETS	5	PLAINVIEW	TEX	KALEX	"	
58	KELLEYS MARKETS	2	BAKERSFIELD	CAL	KELLEYS	Sam Cal	About 1 yr.
42	LEWIS BROS	3	PERKASIE	PEN	KELLOGG		
42	LOWRY A		PHILADELPHIA	PEN	KELLOGG		
81	CENTRAL FOOD EXCHANGE	3	ASTORIA	NY	KEY	Private Brds.	
81	DOUBLE JAY FOOD MARKETS THE	3	NEW YORK	NY	KEY	"	
81	KEY FOOD STORES		BROOKLYN	NY	KEY		
81	PICK QUICK SUPER MARKETS	4	NEW YORK	NY	KEY	Private Brds.	
81	SPEEDWAY FOOD STORES INC	4	BROOKLYN	NY	KEY	"	
56	KING COLE MARKETS INC	5			KING COLE	Ledger Comm Trade	
81	KINGS SUPER MARKETS INC	7	IRVINGTON	NJ	KINGS	J. L. Prescott	Prior to 11/1/67
44	KITCHELLS MARKETS	1	PEKIN	ILL	KITCHELL		
73	SIMON BROS INC		SOUTH BEND	IND	KLORENE		
56	KORYS	12	LOS ANGELES	CAL	KORYS	Jeffmar Mfg.	
44	EISNER GROCERY CO	44	CHAMPAIGN	ILL	LAUNDER MAID		Many yrs.
50	EISNER GROCERY CO	44	CHAMPAIGN	ILL	LAUNDER MAID	Linen Prods.	
44	EISNER FISHER GROCERY CO		SPRINGFIELD	ILL	LAUNDER MAID		
50	JEWEL TEA CO INC	183	MELROSE PARK	ILL	LAUNDER MAID	Linen Prods.	Inter. 7/69
20	AURORA PIGGLY WIGGLY	3	AURORA	COL	LAUNDREX	Textile Cover	.753
20	BIRGES FAMLEE FOODS	2	CHEYENNE	WYO	LAUNDREX	"	
20	BUSLEY SUPERMARKET CO	14	DENVER	COL	LAUNDREX	"	
20	CALS MARKET	2	CHEYENNE	WYO	LAUNDREX	"	
20	KLEIN MARKETS	2	LA JUNTA	COL	LAUNDREX	"	

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Mfg

20	HARR H A GROCERY CO		DENVER	COL	LAUNDREX	
20	PIGGLY WIGGLY	2	DENVER	COL	LAUNDREX	Lilen Corp
49	KLEIN SUPER MARKETS INC	23	ST PAUL	MIN	LE ZURE	
58	LEE BROS MARKETS INC	17	HAYWARD	CAL	LEE BROS	Sales 9/69
50	LINCOLN				LINCOLN	
98	FARHA BROS SUPER MARKETS	8	WICHITA	KAN	LINE X	Line X Co Sales 1969
73	CHEW GROCERY CO	8	RUSSIAVILLE	IND	LITTLE SPORT	J.F. Gabriel
73	HELMS FOOD MARKETS	3	MORGANTOWN	IND	LITTLE SPORT	"
37	HENRY HELMERS BRO CO		CINCINNATI	OHI	LITTLE MONNIE	
73	HUDSON REGAL STORES	2	ELLETTSVILLE	IND	LITTLE SPORT	J.F. Gabriel
62	MC ALLISTER DAIRY FARMS INC	36	WARREN	OHI	LITTLE MACS	
37	HORROWS	2	NEWPORT	KY	LITTLE MONNIE	Comm. Chem. Co.
37	PLEEZING STORES		CINCINNATI	OHI	LITTLE MONNIE	
73	REGAL STORES INC		INDIANAPOLIS	IND	LITTLE SPORT	
73	THOMAS FOOD MARKETS	3	SHELBYVILLE	IND	LITTLE SPORT	J.F. Gabriel
56	LLOYDS MARKETS INC	3	SOUTH GATE	CAL	LLOYDS	Jefferson Trade
42	CROWN MARKETS	3	PAULSBORO	NJ	LOGAN	
42	MAZZANTI & SONS GROCERS	2	BRISTOL	PEN	LOGAN	
42	PENN MUTUAL				LOGAN	
42	RESNICK & WOOLINGER MARKETS	2	HILLVILLE	NJ	LOGAN	
42	ZEBRICK SAMUEL GROCERS	2	PHILADELPHIA	PEN	LOGAN	
78	BIG CHIEF MARKETS	8	CARBONDALE	PEN	MAGIX	Magix Chem Co.
78	GIANT MARKETS	8	SCRANTON	PEN	MAGIX	"
58	BUY & SAVE MARKET		MENLO PARK	CAL	MAID RITE	Semi Chem 9/15/69
58	KOCKOS BROS LTD		S SAN FRANCISCO	CAL	MAID RITE	
56	MALOLEY BROTHERS INC		FORT WAYNE	IND	MALOLEY	
58	MAR VAL FOOD STORES	2	LODI	CAL	MAR VAL	Semi Chem Mfg Co. Akron 1969
50	MARVS SUPER		CHICAGO	ILL	MARC JAY	Semi Chem

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Mfg Russian

90	ZUSMAN H & CO		CHICAGO	ILL	MARC JAY		
62	SCHRADER BROS MARKETS	2	MASSILLON	OHI	MARGLORENE	Mar-Glo Chem.	
58	CANNERY SALES STORES INC	17	OAKLAND	CAL	MARKET	Semi Chem	
56	MARKET BASKET		LOS ANGELES	CAL	MARKET BASKET	Purex Corp.	
58	STANDARD WHO GROCERY CO		OAKLAND	CAL	MARKET		
58	U S MARKETS	5	RODEO	CAL	MARKET	Semi Chem	
58	WESTLAND MARKETS	2	OAKLAND	CAL	MARKET		
73	SROUR THE JOHN C CO	33	SEYMOUR	IND	MARY ANN	J. K. Enterprises	
58	GOLDSTEIN & ISEMAN INC	2	VISALIA	CAL	MAYFAIR	Lodge Chemical	
56	MAYFAIR MARKETS	37	LOS ANGELES	CAL	MAYFAIR	"	"
56	U TEL EM MARKETS	11	LOS ANGELES	CAL	MAYFAIR	Lodge Chemical	
56	MAYFLOWER MARKETS	2	MONROVIA	CAL	MAYFLOWER		
56	MC COYS MARKETS	11	BELLFLOWER	CAL	MC COYS	Purex Corp.	
56	MC DANIELS MARKETS	8	LOS ANGELES	CAL	MC DANIELS	"	"
56	METRICKS MARKETS		COMPTON	CAL	METRICKS		
73	HULMAN & COMPANY LABORATORO		TERRE HAUTE	IND	MIRA CLO		
73	LAMBERTS FOODLINERS	2	WEST TERRE HAUT	IND	MIRA CLO		
16	THOMAS & HOWARD CO			SC	MISS CAROLINA	Broom Chem. Co.	
82	THOMAS & HOWARD CO		CHESTER	SC	MISS CAROLINA	Crystal Chem. Co.	
97	IDAHO FOOD MARKETS	5	IDAHO FALLS	IDA	NO LABEL YET		
79	EL BE GROCER CO		ST LOUIS	MO	NO ME		
79	NATIONAL FOODS DIS		ST LOUIS	MO	NO ME	Royal Wash Co.	32 Quart 15 pc
44	A G STORES		ST LOUIS	MO	NOVEL WASH		
61	GOFF FOOD STORES	3	JEFFERSON CITY	MO	NOVEL WASH	Royal Wash Co.	
44	JACKSONVILLE FOODS	2	JACKSONVILLE	ILL	NOVEL WASH	"	Handling Supplies
79	MALONE & HYDE		SIKESTON	MO	NU WAY	Nuway Products Inc.	
90	O BRIENS SUPERMARKETS INC	4	DETROIT	MIC	OBRIENS		Jan. 1970
58	PAYLESS MARKETS	3	FRESNO	CAL	OUR OWN		

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						Mfg	Duration
58	VANS MARKET	2	FRESNO	CAL	OUR OWN		
59	ANDERSONS SUPER DUPER STORE	3	YAKIMA	WAS	OUR VALUE WASHTEX	Purex Corp.	9/11/67 8/11/68
58	AVILAS MARKETS	2	SAN JOSE	CAL	OUR VALUE WASHTEX		3 year
59	BIG BEAR STORES INC	7	SEATTLE	WAS	OUR VALUE WASHTEX	Purex Corp.	9/11/67 8/11/68
59	CONTINENTAL FOODS		YAKIMA	WAS	OUR VALUE WASHTEX		
59	FOOD KING SUPER MARKETS	12	TACOMA	WAS	OUR VALUE WASHTEX	Purex Corp.	9/11/67 8/11/68
59	FOODLAND	2	SEATTLE	WAS	OUR VALUE WASHTEX	"	"
59	FOODVILLE	2	SEATTLE	WAS	OUR VALUE WASHTEX	"	"
59	GRENIERS MARKETS	2	TACOMA	WAS	OUR VALUE WASHTEX	"	"
45	LOUIS LEVY GRO CO		BATON ROUGE	LA	OUR VALUE WASHTEX		Ident 1965
59	PUGET SOUND PIGGLY WIGGLY	7	PUYALLUP	WAS	OUR VALUE WASHTEX	Purex Corp.	9/11/67 8/11/68
45	RED & WHITE STORES		BATON ROUGE	LA	OUR VALUE WASHTEX		Ident 1965
58	RENZEL E H		SAN JOSE	CAL	OUR VALUE WASHTEX		
59	SWANSON BROS	2	ABERDEEN	WAS	OUR VALUE WASHTEX	Purex Corp	9/11/67 8/11/68
59	WEST COAST GRO CO		TACOMA	WAS	OUR VALUE WASHTEX		
56	OWENS MARKETS	2	SAN BERNARDINO	CAL	OWENS	Colgate-Palm.	1 yr.
56	PANORAMA MARKETS	3	LOS ANGELES	CAL	PANORAMA	Purex Corp.	
42	BEST MARKETS INC		PHILADELPHIA	PEN	PANTRY PRIDE	Virginia Dare	
34	PAPPAS FOOD MARKETS INC	3	BALTIMORE	MD	PAPPAS	Lever Bros.	1 year
37	FOSTERS GROCERY	2	CINCINNATI	OHI	PARKVIEW	Procter & Gamble Co.	
37	JOYCE MARKETS INC	9	CINCINNATI	OHI	PARKVIEW	"	
37	LANGEN FOOD MARKETS	3	CINCINNATI	OHI	PARKVIEW	"	
37	NISHELLS PARKVIEW MARKETS	2	CINCINNATI	OHI	PARKVIEW	"	
37	PARKVIEW MARKETS INC		CINCINNATI	OHI	PARKVIEW		
56	PARKWAY MART	3	BALDWIN PARK	CAL	PARKWAY MART	Sam Yak	3 yrs.
56	PAULS MARKETS	3	SAN BERNARDINO	CAL	PAULS	Colgate-Palm.	18 mos.
73	SHAFOR				PAY DAY		
42	LAX BROS SUPER MARKETS	3	ESSINGTON	PEN	PENN TREATY		

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						Mfg.	Duration
	42	PENN BEEF CO	8	PHILADELPHIA	PEN	PENN TREATY	
	42	QUAKER CITY WHO GRO		PHILADELPHIA	PEN	PENN TREATY	
	42	RYAN STORES CO	4	CHESTER	PEN	PENN TREATY	
	42	SHAFFERS MARKETS	2	ELSMERE	CON	PENN TREATY	
	42	SINGERS GROCERY	2	CAMDEN	CON	PENN TREATY	
	42	STRANO BROS	2	PHILADELPHIA	PEN	PENN TREATY	
	42	WEISS BROS MARKETS	4	CAMDEN	CON	PENN TREATY	
	62	CASSIMERS FOOD MARKETS	2	FARRELL	PEN	PENNSYLVANIA BEST	New Castle Chain Mfg Co.
	62	CHRISTMAN J F CO	2	GREENVILLE	PEN	PENNSYLVANIA BEST	"
	62	JOSEPHS SUPER MARKET INC	2	NEW CASTLE	PEN	PENNSYLVANIA BEST	"
	62	MIRACLE MARKETS INC	2	NILES	OHI	PENNSYLVANIA BEST	"
	57	MC KAYS MARKETS	7	EUGENE	ORE	PHEASANT	
	57	NAMELESS FOOD MARKETS	2	SALEM	ORE	PHEASANT	
	57	PAY N TAK IT	2	VANCOUVER	WAS	PHEASANT	
	57	WADHAMS & COMPANY		PORTLAND	ORE	PHEASANT	
337X	85	PIGGLY WIGGLY OF SAN DIEGO	10	SAN DIEGO	CAL	PLYMOUTH	Jefferson Prods.
	58	LOUIS STORES	36	OAKLAND	CAL	POPPY	Jefferson Mfg.
	56	POWERS MARKETS	3	SAN BERNARDINO	CAL	POWERS	Jefferson Mfg. 14 mos.
	42	MC CRAY & HUNTER FOOD MKTS	3	PHILADELPHIA	PEN	R G E	
	42	RICHMOND GROCERY CO		PHILADELPHIA	PEN	R G E	
	56	RALPHS GROCERY CO	34	LOS ANGELES	CAL	RALPHS	Jefferson Mfg.
	56	BILLS RANCH MARKET	6	BURBANK	CAL	RANCH MARKET	Jefferson Prods.
	85	RANCHO MARKET BASKETS	4	SAN DIEGO	CAL	RANCHO MARKET BASKE	Jefferson Prods.
	44	HOERR CHRIS		PEORIA	ILL	RE JOYCE	
	44	MARQUETTE HEIGHTS SUPER MKT	2	PEKIN	ILL	RE JOYCE	About 5 yrs
	62	BEERS SUPER MARKETS	3	MANSFIELD	OHI	RED LABEL	
	62	CENTRAL FRUIT & GROCERY THE		MANSFIELD	OHI	RED LABEL	
	48	CONSOLIDATED FOODS CORP		CHICAGO	ILL	RED LILY	

FEDERAL TRADE COMMISSION
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DOCKETING DIVISION

ightly Bound

						Mfg	Quantico
46	MONARCH FINER FOODS				RED LILY		
11	THORNES SUPER MARKETS INC	2	PARKERSBURG	WV	RED LILY		Sim w/LILY
42	DALY SUPER MARKETS THE	2	TEMPLE	PEN	RIVAL BLUE		
42	DI BRUNO BROS	2	PHILADELPHIA	PEN	RIVAL BLUE		
42	JERRYS MARKETS	2	PHOENIXVILLE	PEN	RIVAL BLUE		
42	MONTGOMERY WM				RIVAL BLUE		
42	PEOPLES MARKET	2	PHILLIPSBURG	NJ	RIVAL BLUE		
42	PIONEER SUPER MARKETS	3	NAZARETH	PEN	RIVAL BLUE		
42	REGAL SUPER FOOD MKTS INC	2	COLLINGSWOOD	NJ	RIVAL BLUE		
42	TEDESCHI C & SONS	2	CAMDEN	CON	RIVAL BLUE		
85	ROYAL RANCH MKT		ARTESIA	CAL	ROYS		
85	ROYS MARKETS	1	SAN DIEGO	CAL	ROYS	San Val Distr	
58	RUSSELLS MARKETS INC	10	HAYWARD	CAL	RUSSELLS	San Val Mfg	
56	SAGES COMPLETE MARKETS	4	SAN BERNARDINO	CAL	SAGES	Affiliate	12 mos
81	DAITCH SHOPWELL STORES	74	NEW YORK	NY	SALLY SHOPWELL	Rec-Sim	Rec & Mfg
98	CIRCLE FOOD MARTS	2	ARKANSAS CITY	KAN	SANTA FE		
98	RANNEY DAVIS MERC CO		ANTHONY	KAN	SANTA FE		
98	RANNEY DAVIS MERC CO		ARKANSAS CITY	KAN	SANTA FE		
98	RANNEY DAVIS MERC CO		ENID	OKL	SANTA FE		
98	RANNEY DAVIS MERC CO		WICHITA	KAN	SANTA FE		
98	RANNEY DAVIS MERC CO		WOODWARD	OKL	SANTA FE		
98	SHUTLER BROS MARKETS	2	ARKANSAS CITY	KAN	SANTA FE		
98	STONER STORES	2	GARDEN CITY	KAN	SANTA FE		
61	GARRETT WHOLESALE CO	8	WILLOW SPRINGS	MO	SAPO	Sim Elim	
61	HACKIE & WILLIAMS FOOD STOR	6	KIRKSVILLE	MO	SAPO	"	
61	HILGRAM FOOD STORES INC	17			SAPO	"	
61	NOVELLS IGA MARKETS	2			SAPO	"	
79	RAPP SUPER MARKETS		ST LOUIS	MO	SAPO		2 yrs

FEDERAL TRADE COMMISSION FILED

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56 SAV HART INC	2	LONG BEACH	CAL	SAV HART	Jefferson Mfg	4 yrs	
56 MEDRICK BROS	4			SAV MOR	Tobin + Marjorie Cole		
56 SAV MOR MARKETS		LOS ANGELES	CAL	SAV MOR			
44 CERTIFIED STORES		CHICAGO	ILL	SAVADAY			
44 HOWARDS SUPER MARKETS	2	DECATUR	ILL	SAVADAY	Carter Elem Co.		
44 SZILAGYI BROS	3	WESTVILLE	ILL	SAVADAY	"		
44 TOLLYS MARKET	3	DECATUR	ILL	SAVADAY	"		
44 WALKERS SUPER	2	DECATUR	ILL	SAVADAY	"		
62 TRACY & AVERY CO THE	29	MANSFIELD	OHI	SAVEWAY			
30 MID CITY WHOLESALE GROCERY		CHICAGO	ILL	SECURITY	Carter Elem Co		
30 PICK N SAVE FOODS INC	4	CHICAGO	ILL	SECURITY	Thompson		
62 CENTURY FOOD MARKETS CO	28	YOUNGSTOWN	OHI	SHIRLEY ANN	Carter Elem Co	1 yr.	
81 SAKERS SHOP RITE MARKETS	2	FREEHOLD	NJ	SHOP RITE	J. L. Prescott	Form 3 yrs	
81 SZIBDATS SHOP RITE MARKET	2	WEST ORANGE	NJ	SHOP RITE	"	Form 3 yrs	
81 VERONA SHOP RITE INC	2	VERONA	NJ	SHOP RITE	"	"	
81 WAKEFERN FOOD CORPORATION		CRANFORD	NJ	SHOP RITE			
36 SHOPPERS MARKETS	5	LOS ANGELES	CAL	SHOPPERS	Tobin Adams		
56 SIRIS MARKET		SAN FRANCISCO	CAL	SIRIS			
61 ARENSHBERG FOOD CENTER	2	ATCHISON	KAN	SNO WHITE			
61 BI LO MARKET	2	WARRENSBURG	MO	SNO WHITE			
61 BINGS U S SUPER MARKETS	2	SEDALIA	MO	SNO WHITE			
61 BOBS MARKET	2	BLUE SPRINGS	MO	SNO WHITE			
61 DIBBLE GROCERY CO	2	TOPEKA	KAN	SNO WHITE			
98 DRIVE INN MARKETS	2	WINFIELD	KAN	SNO WHITE		Date about 1946	
61 DYERS IGA FOOD CENTERS	2	TOPEKA	KAN	SNO WHITE			
98 ELDONS FOOD MARKETS	2	MARQUETTE	KAN	SNO WHITE		Date about 1946	
98 FISHERS IGA STORES	3	CIMARRON	KAN	SNO WHITE		"	
61 FLEMING CO INC THE		N KANSAS CITY	KAN	SNO WHITE			

Mfg. Location

FEDERAL TRADE COMMISSION RECEIVED DEC 31 1948

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						Mfg	Duration
61	FLEMING CO INC THE		OKLA CITYCITY	KAN	SNO WHITE		
61	FLEMING CO INC THE		TOPEKA	KAN	SNO WHITE		
61	FLEMING CO INC THE		WICHITA	KAN	SNO WHITE		
98	HART FOOD STORES	2	S HUTCHINSON	KAN	SNO WHITE		
98	HILLTOP IGA FOOD CENTER	2	WICHITA	KAN	SNO WHITE		Into about 1946
98	KERBS MARKETS	2	GREAT BEND	KAN	SNO WHITE		"
98	MATHIAS IGA CASH STORES	2	PEABODY	KAN	SNO WHITE		"
98	PARKERS FOOD STORES	2	MEDICINE LODGE	KAN	SNO WHITE		"
61	PENCE FOOD CENTERS	2	OTTAWA	KAN	SNO WHITE		
61	RUSTYS FOOD CENTER	2	LAWRENCE	KAN	SNO WHITE		
98	STUCKY J G & SONS	2	MOUNDRIDGE	KAN	SNO WHITE		Into about 1946
98	THOMPSON BROS GROCERY	2	HUGOTON	KAN	SNO WHITE		"
61	TILTONS MARKETS	2	TOPEKA	KAN	SNO WHITE		
98	WALLS FOODLINER	2	GARDEN CITY	KAN	SNO WHITE		Into about 1946
98	WELLINGTON IGA MARKET	2	WELLINGTON	KAN	SNO WHITE		"
98	WYNN WARREN IGA FOODLINERS	2	WICHITA	KAN	SNO WHITE		"
17	THOMAS & HOWARD CO WHO		ASHEVILLE	NC	SO HY		
61	ASSOCIATED GROCERS INC		KANSAS CITY	KAN	SO WHITE		
61	GERBES SUPER MARKETS	3	TIPTON	MO	SO WHITE	Large Elec	6 mos.
61	LUCKY STRIKE SUPER STORES	2	KANSAS CITY	MO	SO WHITE	"	"
61	MONTEILS SUPER MARKETS	2	KANSAS CITY	MO	SO WHITE	"	"
61	MUELLERS MARKETS	3	MERRIAM	KAN	SO WHITE	"	"
61	RIEDERS SUPER MARKETS	3	KANSAS CITY	MO	SO WHITE	"	"
61	SAV MOR FOOD CENTERS	2	JEFFERSON	MO	SO WHITE	"	"
61	THRIFTWAY FOOD MART	4	KANSAS CITY	KAN	SO WHITE	"	"
81	GREENWICH FOOD CENTER	2	GREENWICH	CON	SO WITE	Rem-Rand	Beg to 9/1/47
81	SEEMAN BROTHERS INC		NEW YORK	NY	SO WITE		
81	SERV U SUPER MARKETS	2	YONKERS	NY	SO WITE	Rem-Rand	Beg to 9/1/47

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						Mfg	Duration
60	ALBERTSONS FOOD CENTERS	43	BOISE	IDA	SONNY BOY	Lucas Corp	
60	ALBERTSONS FOOD CENTERS		SPOKANE	WAS	SONNY BOY		
60	ROUNDUP GROCERY CO		SPOKANE	WAS	SONNY BOY		
60	SIGMAN FOOD STORES	16	SPOKANE	WAS	SONNY BOY	Lucas Corp	
10	EVANS JACK FOOD MARTS INC	7	DALLAS	TEX	SPARKLIN WHITE	Industrial Equities	
95	KROGER CO THE				SPARKLIN WHITE	"	
77	KROGER CO THE		EAST POINT	GA	SPARKLIN WHITE	"	
10	TEXAS WHOLESALE GROCERY		DALLAS	TEX	SPARKLIN WHITE		
10	WYATT FOOD STORES	29	DALLAS	TEX	SPARKLIN WHITE	Industrial Equities	
34	AMERICAN STORES CO		BALTIMORE	MD	SPEEDUP		10 yrs
89	AMERICAN STORES CO		JOHNSTOWN	PEN	SPEEDUP	Kool Flow Co.	
81	AMERICAN STORES CO		KEARNY	NJ	SPEEDUP	J. K. Prescott	Prior to 9/1/67
42	AMERICAN STORES CO	961	PHILADELPHIA	PEN	SPEEDUP	"	
93	AMERICAN STORES CO		SYRACUSE	NY	SPEEDUP		Many years
78	AMERICAN STORES CO		WILKES BARRE	PEN	SPEEDUP	J. K. Prescott	
1	NU WAY SUPER MARKETS INC	67	BUFFALO	NY	SPEEDUP		
81	SPINNERS SUPER MARKETS	7	BROOKLYN	NY	SPINNERS	Prescott Prods	
74	COLONIAL STORES INC		NORFOLK	VIR	SPOTLESS	Blue Magic Co.	Since 6/1/67
56	JAYS MARKETS	2	EL MONTE	CAL	STARLITE	Starlite Prods. Co.	
97	STIMSONS INC	4	OGDEN	UTA	STIMSONS		9/67
5	STOP & SHOP INC	83	BOSTON	MAS	STOP & SHOP	J. K. Prescott	5/1/67
5	STOP & SHOP INC		WEST HARTFORD	CON	STOP & SHOP	"	many years
81	DAVIDSON BROS	5	NEW BRUNSWICK	NJ	SUN DIAL	"	Prior to 9/1/67
81	DI LEO & SONS INC	3	LINDEN	NJ	SUN DIAL	"	"
81	FOOD CIRCUS SUPERMARKETS	3	MIDDLETOWN	NJ	SUN DIAL	"	"
81	HAYFAIR SUPER MARKETS	9	PLAINFIELD	NJ	SUN DIAL	"	"
81	NATIONAL GROCERY CO	6	ELIZABETH	NJ	SUN DIAL	"	"
81	PIED PIPER SUPER MARKETS	3	LINDEN	NJ	SUN DIAL	"	"

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FEDERAL TRADE COMMISSION
EXHIBIT NO. 5417

						Mfg	Quarters
81	TWIN COUNTY GROCERS INC		LINDEN	NJ	SUN DIAL		
82	HARRIS SUPER MARKETS INC	7	CHARLOTTE	NC	SUN GLO	Lauren Packing Corp	2 yrs. about 7/62
95	HUDSON THOMPSON		MONTGOMERY	ALA	SUN GLO	"	
95	PIGGLY WIGGLY OF MONTGOMERY		MONTGOMERY	ALA	SUN GLO	"	2 yrs. about Spring '62
82	TEETERS FOOD MARTS	3	MOORESVILLE	NC	SUN GLO	"	2 yrs. about 7/62
64	GIANT FOOD SHOPPING CENTER	56	WASHINGTON	DC	SUN PRIDE		
74	GIANT FOOD SHOPPING	2	WASHINGTON	DC	SUN PRIDE		
64	HARRISBURGH GROCERY CO		HARRISBURG	PEN	SUN PRIDE		
62	KOCHS FOOD MARKETS	2	HARRISBURG	PEN	SUN PRIDE		
62	SUPERIOR STORES CO	3	HARRISBURGH	PEN	SUN PRIDE		
5	FIRST NATIONAL STORES		EAST HARTFORD	CON	SUNNY DAY	J. L. Prescott	Several yrs.
5	FIRST NATIONAL STORES		EAST PROVIDENCE	RI	SUNNY DAY	"	"
5	FIRST NATIONAL STORES INC	3	PORTLAND	ME	SUNNY DAY	"	"
5	FIRST NATIONAL STORES INC	631	SOMERVILLE	MAS	SUNNY DAY	"	"
64	SARATOGA SUPER MARKETS	2	MOUNT RAINER	MD	SUNOL	Del-Cod Elec. Co.	
62	FAMILY FOOD STORES	3	YOUNGSTOWN	OHI	SUNSHINE	James Gallo	
61	SPRINGFIELD GROCER CO		SPRINGFIELD	MO	SUNSHINE		
5	SUPREME MARKETS INC	5	DORCHESTER	MAS	SUPREME	L. L. Tomasi Co	many yrs.
85	TANGS SUPER MARKETS	2	NATIONAL CITY	CAL	TANGS	Lowell Dick	4 yrs.
79	ERBRICH				TIME SAVER	Erbrich Prod.	
89	THOROFARE MARKETS INC		PITTSBURGH	PEN	TIP TOP	J. A. Chemical Co	
90	TOMBOY MARKETS INC	3			TOM BOY		Since 1/62
79	STOCKER HAUSMANN GROC CO		ST LOUIS	MO	TRABON		1 yr.
59	TRADEWELL STORES INC	41	SEATTLE	WAS	TRADEWELL	Lauren Corp	Since 9/1/62
34	SCHREIBER BROS INC	5	BALTIMORE	MD	TRU WITE	Del-Jon Elec Co	5 yrs.
42	ACCARDIS MARKETS	2	BRISTOL	PEN	UNITY		
42	FAMOUS DELICATESSEN STORES	3	PHILADELPHIA	PEN	UNITY		
48	FOODLAND CO	2	PHILADELPHIA	PEN	UNITY		

RETAIL FOOD CHAINS

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FEDERAL TRADE COMMISSION FILED

	42	FRANKFORD GROC CO				UNITY	
	42	KANES SUPER MARKET	2	LEVITOWN	PEN	UNITY	
	42	LANCASTER COUNTY FARMERS MK	2	PHILADELPHIA	PEN	UNITY	
	42	LEVINS MARKETS	2	PHILADELPHIA	PEN	UNITY	
	42	SCHAAFS MARKETS	2	PHILADELPHIA	PEN	UNITY	
	42	TAGLIEBERS MARKETS	2	NORRISTOWN	PEN	UNITY	
	81	UNIVERSAL MARKETS				UNIVERSAL	J. F. Burnett discontinued
	42	B & H SUPER MARKET	3	PHILADELPHIA	PEN	VALLEY FORGE	
	58	CANNED FOOD CENTERS	2	SAN FRANCISCO	CAL	VALLEY BLOOM	Sani Clor
	42	CARLS MARKET INC	3	CHAMBERSBURG	PEN	VALLEY FORGE	
	42	CASSELS FOOD MARKETS	4	SOUDERTON	PEN	VALLEY FORGE	
	42	CLEMENS SUPER MARKETS	2	LANSDALE	PEN	VALLEY FORGE	
	42	D & L MARKETS	2	PHILADELPHIA	PEN	VALLEY FORGE	
	42	HARTEL BROS SUPER MARKETS	8	CHESTER	PEN	VALLEY FORGE	
	42	SAFE FOOD MARKETS	9	CROYDON	PEN	VALLEY FORGE	
	42	SCHUYLKILL VALLEY WHO CO				VALLEY FORGE	
	42	SERHOFF BROS MARKETS	2	QUAKERTOWN	PEN	VALLEY FORGE	
	99	BUDDYS SUPER MARKETS	7	AMARILLO	TEX	W P	
	99	HORNE FOOD STORES	5	ROSWELL	NM	W P	
	99	WAPLES PLATTER COMPANY		FORT WORTH	TEX	W P	
	42	CAMDEN GROCERY CO		PHILADELPHIA	PEN	WALT WHITMAN	
	42	JERSEY FOOD CENTER INC	2	GLOUCESTER CITY	NJ	WALT WHITMAN	
	61	BEAVERS MARKET	2			WASH WHITE	Sapo Clor Clor G.
	61	KROGER CO THE		KANSAS CITY	MO	WASH WHITE	"
	61	TEMPLE STEPHENS CO	23	MOBERLY	MO	WASH WHITE	"
	61	TOWNSEND WHOLESALE		MARYVILLE	MO	WASH WHITE	
	79	TRI CITY GROCERY CO		GRANITE CITY	ILL	WASH WHITE	Sapo Clor Clor G Neat soap.
	58	CARDINAL GROCERY STORES INC		SACRAMENTO	CAL	WASH WITE	

						Mfg.	Duration
58	LUCKY STORES INC	98	SAN LEANDRO	CAL	WASH WITE		
1	WINN DIXIE				WHITE ARROW	Swige Chem. Co.	
16	WINN DIXIE STORES INC		GREENVILLE	SC	WHITE ARROW	"	
75	WINN DIXIE LOUISVILLE INC		LOUISVILLE	KY	WHITE ARROW		6 mos.
95	WINN DIXIE MONTGOMERY		MONTGOMERY	ALA	WHITE ARROW		Intro. Spring '68
45	WINN DIXIE MILL INC		NEW ORLEANS	LA	WHITE ARROW		Intro. 2/69
86	WINN DIXIE STORES INC		RALEIGH	NC	WHITE ARROW	Swige Chem Co.	Intro. 7/6/68
87	WINN DIXIE STORES INC		RALEIGH	NC	WHITE ARROW		
14	WINN DIXIE		TAMPA	FLA	WHITE ARROW		Intro 8/68
37	COLONIAL STORES INC		CINCINNATI	OHI	WHITE CAP	Comm. Chem. Co.	
84	FOOD FAIR SUPER MARKETS		WASHINGTON	DC	WHITE DOVE		
81	GRAND UNION CO THE	382	EAST PATERSON	NJ	WHITE DOVE	J. L. Prescott	Prior to 4/1/67
25	GRAND UNION CO		WATERFORD	NY	WHITE DOVE		
91	GRAND UNION CO THE		WATERFORD	NY	WHITE DOVE		Many yrs.
91	GRAND UNION CO THE		WAVERLY	NY	WHITE DOVE		
25	SCHAFFER STORES CO INC	43	SCHENECTADY	NY	WHITE DOVE		
62	FISHER BROS CO THE	98	CLEVELAND	OHI	WHITE MONDAY	Sanilam Mfg. Co.	
93	SAFEWAY STORES INC		AMARILLO	TEX	WHITE MAGIC	Safeway Stores Inc.	
35	SAFEWAY STORES		BUTTE	MON	WHITE MAGIC	"	
10	SAFEWAY STORES INC		DALLAS	TEX	WHITE MAGIC	"	
20	SAFEWAY STORES INC		DENVER	COL	WHITE MAGIC	"	
21	SAFEWAY STORES INC		EL PASO	TEX	WHITE MAGIC		
81	SAFEWAY STORES INC		JERSEY CITY	NJ	WHITE MAGIC	J. L. Prescott	Prior to 4/1/67
61	SAFEWAY STORES INC		KANSAS CITY	MO	WHITE MAGIC	Safeway Stores Inc.	
54	SAFEWAY STORES INC		LITTLE ROCK	ARK	WHITE MAGIC	"	
56	SAFEWAY STORES INC	275	LOS ANGELES	CAL	WHITE MAGIC	"	
58	SAFEWAY STORES INC	1 996*	OAKLAND	CAL	WHITE MAGIC	"	
99	SAFEWAY STORES INC		OKLAHOMA CITY	OKL	WHITE MAGIC	"	

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						Mfg	Narrative
29	SAFEWAY STORES INC		OMAHA	NEB	WHITE MAGIC	Safeway Stores Inc.	
30	SAFEWAY STORES INC		OMAHA	NEB	WHITE MAGIC	"	
23	SAFEWAY STORES INC		PHOENIX	ARI	WHITE MAGIC		
57	SAFEWAY STORES INC	2	PORTLAND	ORE	WHITE MAGIC	Safeway Stores, Inc.	
85	SAFEWAY STORES INC	35	SAN DIEGO	CAL	WHITE MAGIC	"	
97	SAFEWAY STORES INC		SALT LAKE CITY	UTA	WHITE MAGIC	"	
59	SAFEWAY STORES INC		SEATTLE	WAS	WHITE MAGIC	"	
60	SAFEWAY STORES INC		SPOKANE	WAS	WHITE MAGIC	"	
64	SAFEWAY STORES INC		WASHINGTON	DC	WHITE MAGIC	"	
98	SAFEWAY STORES INC		WICHITA	KAN	WHITE MAGIC	Safeway Stores	Intra 1948 or 1949
1	WALGREEN DRUG STORES		CHICAGO	ILL	WHITE NAVY	Milton Hermian Co.	
79	NATIONAL FOOD STORES		ST LOUIS	MO	WHITE TOP	Lapis Elias	2 yrs.
61	CONSUMERS WAREHOUSE MARKETS	4	SPRINGFIELD	MO	WHITEX	New Way Prods. Co.	2 yrs.
56	SHOPPING BAG FOOD STORES	32	LOS ANGELES	CAL	WHITEX	Jefferson Mfg.	
97	WINEGARS SUPER MARKETS INC	4	BOUNTIFUL	UTA	WINEGARS		Intra 1948
56	WRIGLEYS MARKETS	2	INGLEWOOD	CAL	WRIGLEYS	Jefferson Mfg.	4 mos.
23	BAYLESS A J MARKETS INC	24	PHOENIX	ARI	X O X		
62	REGOS STOP N SHOP	2	WESTLAKE	OHI	XCELL O	Xcell-o Co.	
56	YOR WAY MARKETS	9	COMPTON	CAL	YOR WAY	Jefferson Mfg.	9 mos.

FEDERAL TRADE COMMISSION
FILED

Respondent's Exhibit No. 71 A-N, for Identification
(not admitted into evidence)
Competitive Liquid Bleach Promotions

RX71 C

COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
AUSTIN'S A-1	2-14-56		3-03-56	8-22-56		7-17-56	12-05-55		11-03-56	6-29-57		3-07-56	7-13-57
(1955-1956)	3-26-56		4-02-56	10-03-56		7-19-56	10-27-56		3-23-57	1-24-56		4-26-56	10¢ to whsl.
	4-04-56		5-05-56	10-31-56		9-05-56	12-15-56		4-26-56	4-26-56		6-13-56	grocery sls
	4-30-56		9- -56			9-13-56	1-26-57		10-18-56	7-11-56		10-31-56	men
			10- -56			10-18-56	3-21-57			7-17-56			
			11- -56				1-03-56			9-12-56			
			7-22-57				1-10-56			9-26-56			
			11-09-57				2-08-56						
			6-06-56				3- -56						
			9-05-56				5-24-56						
			9-10-56										
			9-18-56										
			10-04-56										
			10-10-56										
			10-25-56										
BARCOLENE BLEACH			5-13-56							5-23-56			
(1955-1956)													
BEACON			1-10-56										
(1956-1956)													
BEST WHITE							4-18-56						
(1955-1956)							4-21-56						
BLACK GOLD									3-29-56				
(1956)													
CLOROX			3-16-56										
(1955-1956)													

346X

COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
CLO-WHITE (1956-1958)	7-30-56		7-22-57 2-22-58 4-17-58	2-08-57	7-09-56							10-10-58	12-12-56 Invited agcy.& buyers of job-bing hses. to lodge at Savannah for 8nd time.
DASH (1955-1958)	11-09-55 12- -55 10-08-56 10-09-56 3-08-57 10-04-57 11- -57 3-27-58 Rev. 4-10-58 5-09-58 5-08-58 5-30-58 7-25-58	11-25-55	3-10-56 3-16-56 3-30-56 5-09-56 6- -56 11-17-56 11-30-56 12- -56 1- -57 (all year) 5-03-57 10-14-57 1-09-58 2- -58 3- -58 4- -58 5-14-58 5-16-58 6- -58 6-09-58	5-25-56	11-04-55 5-25-56 6- -56 10-08-56 2-01-57 10-10-57 3-27-58 Rev. 4-10-58 5-09-58	6-27-58 9-12-58	3- -57 10- -57 11- -57 4- -58 5-09-58 6-25-58 8-25-58 9-05-58 9-12-58 9-16-58 10-17-58 10-24-58 10-31-58	12-17-55 6- -56 8-01-57 4-09-58 5-25-58				3-21-58 10-24-58	
347X													
BLEACH (1955-1958)			5-05-56				10-18-57			10-18-57			
BIG WHITE (1955-1958)									4-12-58			7-09-58	

COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
EASY MONDAY (1956-1958)			2-03-56 2-17-56 4-06-56 5-04-56 5-05-56 6-01-56 11-03-56 3-30-57 4-20-57 2-01-58 2-03-58 2-22-58 3-22-58 5-03-58 5-05-58 5-15-58 6- -58 7- -58 8- -58 8-30-58 9- -58 10- -58 11- -58 12- -58										
EASY WHITE (1957)							10-12-57			10-12-57			
[redacted] (1955-1958)										4-28-58		12-28-56	

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COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowances	Retail Allowances	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Counter Recount	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
FLEECY WHITE (1955-1958)	3-28-57		11-14-55 1-31-56 5-05-56 5-15-56 5-25-56 6- -56 6-09-56 6-22-56 6-29-56 6-30-56 8-27-56 9-22-56 10-06-56 10-08-56 11-23-56 11-28-56 2-09-57 3-08-57 3-23-57 4-22-57 5-27-57 6-06-57 6-22-57 7-13-57 8-10-57 8-28-57 9-07-57 9-19-57 9-27-57 10-01-57 10-03-57 10-15-57 1-25-58 2-13-58 2-21-58 2-28-58 3-01-58 3-14-58 4- -58 4-19-58 5-10-58 6- -58 6-21-58 7- -58 7-17-58 8-01-58 8-30-58 9-12-58 9-22-58		7-18-56 9-07-57 3-10-58 3-13-58 3-18-58 4-19-58		7-13-57 8-10-57 9-19-57 1-10-58 6-20-58 8-22-58 9-13-58 10-11-58	7-17-58	9-22-56	1955 3-21-56 5-02-56 5-26-56 6- -56 6-18-56 6-30-56 8-03-56 9- -56 10-22-56 11-28-56 3-15-57 6-15-57 7-27-57 8-01-57 10- -57 8-16-58 9-27-58		3-01-57 10-05-57 11-08-57 4-26-58 5-10-58 6-28-58 7-18-58 10-18-58	10-1-57 1 free w/10 plus $25 per mo. 10-24-57 Albers running "Mgrs. Contest Promotion" 9/8 to 11/2/57. Substantial amt of floor displays. 2-15-58 10¢ a case Salesmen Bonus. 10-31-58 F.W. purch. by Purex Corp.

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COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
GAY													
(1957)													3-27-57 Wholesale salesmen rec. 5¢ per case from the maker for ea. case sold.
GLOBE BLEACH			8-27-56										
(1956-1957)													
GLO WASH			5-05-56										
(1956-1957)			10-08-56										
			1-25-57										
HI-LEX	10-13-56	5-21-56	8-16-57	1955	8-10-57		6-15-56		1956	3- -58		9-25-57	12-15-56
(1956-1958)	8-08-57	3-31-58	3-01-57	3- -56			12-08-56		1957	5-31-58		10-21-57	Putting out new 1957 calendar.
		8-30-58	4-25-57	10-13-56			4-13-57		4-12-58	10-17-58		11-23-57	
			11-02-57	11- -56			5-04-57		4-18-58				
			11-23-57	6-15-57			6-22-57		5-10-58				
			1-18-58	11-09-57			8-03-57		10-04-58				
				7-25-58			9-25-57						
							9-30-57						
							10-19-57						
							11-09-57						
							11-23-57						
							1-11-58						
							4-04-58						
							6-04-58						
							9-22-58						
							10-25-58						
HOOD HOUSEHOLD			3-03-56										
(1956)													

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COMPETITIVE LIQUID BRAND PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
												5-04-56	
												10-11-57	
												11-08-57	
												4-04-58	
												10-17-58	
												10-25-58	
												11-01-58	
HOOD "33"	12-05-55		3-10-56	3-19-56	4-17-56		1-21-57						
	Eff. 12-01-55-		5- -56		1-21-57		6-21-57						
(1955-1958)	12-31-55		5-04-56		2- -57		4-01-58						
	1-10-56		5-12-56		7-17-57		Eff. 3-28-58						
	Eff. 12-30-55		6- -56		4-04-58		4-04-58						
	1-15-57		9- -56				Eff. 3-28-58						
	8-07-57		10- -56				4-11-58						
	3-28-57		11- -56				7-05-58						
	7-17-57		12- -56				7-10-58						
	9- -57		(1-18-57)				Eff. 6-16-58						
	10- -57		(all year)				8-08-58						
	11- -57		2- -57				9-09-58						
	2-20-58		2-20-57				10-03-58						
	Eff. 2-17-58		3- -57				10-10-58						
	4-01-58		7- -57										
	Eff. 3-28-58		7-05-57										
	4-04-58		8- -57										
	4-04-58		11-22-57										
			12- -57										
			1-03-58										
			2- -58										
			3- -58										
			3-14-58										
			3-28-58										
			8-30-58										
			10-25-58										
HI-HEX			8-13-58		8-13-58								
(1958)													
HALEX			8-16-57										
			11-23-57										
(1957-1958)			1-16-58										
			3- -58										
HORNOR WATER					10-18-57								
(1955-1958)													

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COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
LEX			5-26-56										
(1956)													
LINCO	10-08-52	9-27-57	1953	4-17-52	11-04-55	4-14-54	2-08-55	2- -55		1953		4-02-53	
	8-24-54	2-04-58	11-13-53	1953	7-18-56		4-25-55	2-08-55		3-16-53		10-12-57	
(1958-1958)	6-11-56	3-14-58	1-01-54	12-21-53	1-07-57		6-30-55	3- -55		1955		12-07-57	
	9-20-57	6-24-58	3-30-54	2-18-54	3-14-58		9-04-56	9-15-55		8-04-56		5-10-58	
	4-04-58		4-09-54	10-05-57			6-06-56	Eff.9-12-55		12-07-57		10-18-58	
	10-03-58		4-14-54	6-06-58			12-14-56	10-15-55		2-07-58			
			6-14-54				4-02-57			3-14-58			
			10-18-54				6-08-57			5-29-58			
			1955				7-13-57			7-18-58			
			5-06-56				9-09-57			9-27-58			
			6-09-56				10-05-57			10-08-58			
			10-13-56				10-26-57			10-18-58			
			11-10-56				11-15-57			10-24-58			
			12-28-56				12-07-57						
			4-20-57				12-20-57						
			5-10-57				1-03-58						
			9-23-57				2-03-58						
			10-01-57				2-21-58						
			11-09-57				4-30-58						
			4-18-58				5-22-58						
			6-04-58				5-23-58						
			6-18-58				5-24-58						
			8-09-58				5-25-58						
			10-04-58				5-26-58						
							5-27-58						
							5-28-58						
							5-29-58						
							5-30-58						
							5-31-58						
							6-01-58						
							6-02-58						
							6-03-58						
							6-04-58						
							6-05-58						
							6-06-58						
							6-07-58						
							6-08-58						
							6-09-58						
							6-10-58						
							6-11-58						
							6-12-58						
							6-13-58						
							8-01-58						
							9-06-58						
							10-10-58						

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COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
LINEN WHITE (1957-1958)			1-25-58 2-18-58 3- -58 6- -58										
MIRA-GLO (1955-1958)												10-04-58	
MISS CAROLINA (1955-1958)												10-24-58	
NOVEL WASH (1958)			5-31-58										
NU DEAL (1958)												8-29-58	
NUWAY (1955-1958)	3-08-57		12-19-56 3-08-57 5-04-57 7-07-57 8-10-57 3-19-58 3-31-58 6-09-58 10-18-58		11-14-56					5-04-57			
OIL (1955-1958)	4-10-58		8-09-57 3-06-57 5-08-57 11-22-57 12-14-57 2-07-58 4-11-58 9-26-58	1957					8-22-58	8-13-56			

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COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
PUREX	6-29-56	3-26-56	4-16-56	1955	2-08-57		1-11-58		1-10-57	8- -57	1955	1956	1955
(1955-1958)	9-28-56	11-15-56	4-23-56	9-30-58	9-28-57		9-26-58		12-31-57	6-23-58	1956	7-12-57	First purch. refund
	11-08-56	9-26-57	5-12-56		2-08-58		10-17-58		10-18-58	9-19-58	7-30-57	8-11-57	Money Saver
	9-03-57	1-27-58	9-29-56		4-13-58		10-18-58			9-24-58		8-26-57	
		2-04-58	10-04-56		10-21-58		10-21-58					11-02-57	
		3-01-58	1-19-57		10-31-58		10-31-58					11-15-57	
		5-06-58	2-08-57									11-23-57	9-5-58
		6-26-58	3-08-57									11-29-57	Bloomberter Promotion
		9-27-58	4-06-57									11-30-57	
		10-18-58	5-17-57									1-17-58	
			6-08-57									1-24-58	
			6-15-57									10-11-58	
			7-06-57										
			7-13-57										
			7-27-57										
			8-03-57										
			8-26-57										
			9-07-57										
			9-14-57										
			9-28-57										
			10-05-57										
			10-18-57										
			11-08-57										
			11-04-57										
			11-13-57										
			11-15-57										
			12-14-57										
			12-23-57										
			12-26-57										
			1-02-58										
			1-15-58										
			10-18-58										
ROMAN CLEANSER	2-07-56	4-17-56		5-25-56	10-19-56	10-05-56	10-19-56		11-10-56	10-22-56		10-05-56	5-22-56
(1955-1958)	Rtr.3-25-56	4-18-56		10-22-56	1-30-57	3-22-57	10-22-56		3-30-57			10-09-57	1000 pt. bottles to be distributed free to consumers at opening of new store in Atlanta.
	3-14-56	4-30-56		1- -57	8-13-58	6-07-57	10-25-56		8-24-57			12-06-57	
	4-05-56	10-22-56		4-15-57	7-23-58	3-14-58	Rtr.11-05-56					9-09-58	
	Rtr.4-01-56	11-05-56		2-08-58			11-30-56						6-16-56
	4-06-56	11-30-56		6-06-58			11-02-56						1800 pts. given away at opening of Colonial Store, Gumbellton Plaza.
	4-14-56	9-19-57					11-09-56						
	7-03-58	10-07-57					11-14-56						
	Rtr.6-23-58-	4-01-58					11-17-56						
	7-19-58	Rtr.3-24-58-					11-30-56						
	7-09-58	6-14-58					12-01-56						
	Rtr.6-23-58-	6-24-58					12-08-56						
	7-15-58	8-18-58					8- -57						
		Rtr.9-08-58					9-18-57						

(continued)

COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Reimburse	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
ROMAN CLEANSER (continued)							Eff. 10-07-57-						11-9-56- 5 free cases sample pint bottles in exchange for 8-case display.
							12-02-57						
							9-27-57						
							10-05-57						
							10-18-57						
							10-25-57						
							11- -57						
							11-01-57						
							11-19-57						
							11-25-57						9-13-57 Kroger given 15 cases pints free to give away during a sale. Also given 25 cases of 5¢/pt. samples on 8/25/57.
							12-06-57						
							12-14-57						
							1- -58						
							1-04-58						
							2-06-58						
							3-01-58						
							3-22-58						
							5-30-58						
							Eff. 6-23-58						
							6- -58						
							6-16-58						7-3-58 New Kroger store gave out 15 cases sample pints.
							6-23-58						
							6-25-58						
							7-03-58						
							7-18-58						
							7-19-58						
							7-23-58						
							8-18-58						
							9-06-58						
							9-19-58						
							9-27-58						
							10-04-58						
							10-11-58						
ROHR-X (1957-1958)	3-13-58 Eff. 3-03-58- 3-31-58						1-25-57		2-16-57				
							1- -58		8-08-57				
							2- -58						
							3- -58						

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COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
BOX (1957-1958)		10-19-57 11-02-57	8-14-57 12-07-57									10-25-58	
SANI-CLOR (1956-1958)			5-22-56 11-17-56 12-05-56 1-15-57 2-25-57 3-04-57 1-09-58 3-21-58 4-15-58 5-09-58 6-11-58 Eff. 6-09-58 8-29-58 9- -58 9-03-58	1956									
SAV-A-DAY (1956-1958)			8-08-58	6-22-56								10-24-58	
SAVOL (1957-1958)			5-30-58									12-13-57 3-21-58 7-25-58 8-29-58	
SEO-BOX BLEACH (1956-1958)			3-31-56 5-25-56 6-22-56 9-21-56 3-15-57 10-25-57 12-20-57 4-11-58 9-12-58				6-22-56 2-21-57 3- -57 6- -57 3-28-58 8-15-58						

X 1564

COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Recount	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
SNO CLEAN (1956-1958)		9-09-56 10-31-56 11- -56 11-03-56	10-05-58										
SNO-WHITE (1958)												6-07-58	
SIR (1957-1958)					12-08-57 6-30-58		8-10-57 9- -57 11-30-57 2- -58 8-30-58 9- -58						
SPOTLESS (1958)						6-21-58							
SUNLIGHT (1957-1958)	357X			5-23-58								4-11-58	
SUNNY SOL (1956-1958)			1956 1957 1958		1958					1956			
SURFAS (1958)					1-06-58 1-17-58		10-18-58						
SURF KLEAN (1957-1958)		6-26-58 10-04-58											

COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
TEXIZ	6-19-56		5-04-56	3-05-56			6-07-56		7-17-56	5-05-56		5-18-56	
(1956-1958)	7-18-58		5-25-56	10-25-56			7-18-56		8-03-56	4-27-57		11-03-56	
			10-12-56	7-20-57			9-29-56		8-27-57	11-23-57		11-28-56	
			1-18-57				10-14-56			4-25-58		3-16-57	
			3-08-57				10-21-56					9-28-57	
			3-16-57				11-07-56					11-30-57	
			4-13-57				3-07-57					3-15-58	
			4-20-57				4-20-57					Eff. 3-31-58	
			6-28-57				4-29-57					3-24-58	
			6-29-57				5-03-57					4-19-58	
			7-13-57									4-26-58	
			7-20-57										
			12-07-57										
			8-28-58										
			3-01-58										
			3-29-58										
			6-07-58										
			8-08-58										
ZEE WAY			3-23-57							11-08-57		11-01-58	
(1957-1958)			5-20-57										
			6-28-57										
			11-01-58										
WARD			6-09-56	1957			3-08-57						
(1956-1957)							4-08-57						
WARD	6-08-57		1-18-56										
(1956-1957)	7-27-57		8-09-56										
			10-06-56										
			11-04-56										
			3-25-57										
WHITE ARROW												9-27-57	
(1957-1958)												10-11-57	
												10-25-57	
												10-10-58	

COMPETITIVE LIQUID BLEACH PROMOTIONS

	Factory Allowance	Retail Allowance	Free Goods to the Dealer	Premiums	Advertising & Merchandising Plan	One Free with One, etc.	Cents Off	Count & Account	Incentive Premiums to Dealers	Coupons	Contest	Special Displays	Miscellaneous
WHITE CAP (1957-1958)							4-07-57 4-19-58						
WHITE CROSS (1957-1958)			1-19-57		12-08-57 6-30-58		6-08-57 10-08-57 8-15-58 9-06-58 10-31-58						
WHITE MAGIC (1956-1958)				11-18-56 1957 1-06-58 3-30-58						7-05-58			
WHITE NORMAT (1956-1958)	4-06-57 8-19-58	8-07-56 7-01-58 4-18-58	10-13-56 6-08-57	8-28-58	1-06-58	8-23-58	5-11-57 6- -57 6-08-57 6-14-57 7- -57 7-18-57 8-17-57 9-06-58 10-31-58			6-30-58		10-31-58	

X65X

Respondent's Exhibit No. 77A&B
Letter, The Paul E. Kroehle Co. to Trimpe, dated
November 10, 1958, with enclosure

RX. 77-A

THE PAUL E. KROEHLE CO.

FOOD BROKERS

304 WESTERN RESERVE BUILDING
1468-1470 WEST NINTH ST., N.W.

PRIVATE BRANCH EXCHANGE
[redacted]
SUPERIOR 1-4030

CLEVELAND 13, OHIO

November 10, 1958

Mr. B. F. Trimpe
The Clorox Co.
OAKLAND, CALIFORNIA

Dear Bernard:

One of our buyers gave us the enclosed notice from Purex Corp., announcing the acquisition of John Puhl Products Co.

We know you are aware of this transaction, but thought you would be interested in the announcement if it had not reached you.

Sincerely,

THE PAUL E. KROEHLE CO.

Per

Ossman:MC

cc A.G.L.

360X

FEDERAL TRADE COMMISSION
DOCKET NO. 5961 EXHIBIT NO. 77-A
IN THE MATTER OF The Procter & Gamble Company
DATE 2 NOV 59 WITNESS TRIMPE
ACE REPORTING CO. Official Reporter
By G. MONICK

FEDERAL TRADE COMMISSION RX. 77-B
DOCKET NO. 6991 RESPONDENT EXHIBIT NO. 77-B

PUREX CORPORATION, LTD.

9300 RAYO AVENUE • SOUTH GATE • CALIFORNIA

October 29, 1958

To Customers of Purex Corporation:

We announce with pleasure that effective October 27, the John Puhl Products Company division of Sterling Drug, Inc. has been acquired by the Purex Corporation, Ltd. It will continue operations as a separate division of Purex with headquarters in Chicago under the direction of Mr. Stanley H. Kord, President of the John Puhl Products Co., who has been elected a Vice-President of Purex.

As you know, Purex is a rapidly growing business, manufacturing such well-known products as Liquid TREND, Dry TREND, BEADS O'BLEACH, PUREX Liquid Bleach, SWEETHEART Soap, DUTCH CLEANSER and BLU-WHITE Bluing. Recently the Allen B. Wrisley Company of Chicago, a pioneer soap and toiletries manufacturer, was acquired by Purex. Prior to this, Purex acquired the Manhattan Soap Company of New York, and the Dutch Cleanser Division of Cudahy Packing Company.

The acquisition of John Puhl Products Company includes FLEECY WHITE Liquid Bleach, MAGIC Bleach, LITTLE BO-PEEP Ammonia, and LITTLE BOY BLUE Liquid Bluing. There will be no change in current sales policies and the salesmen and brokers of the John Puhl Products Company will continue to solicit orders for their line of products as in the past.

Your continued cooperation will be appreciated.

Yours very truly,

A. C. Stoneman
President

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Respondent's Exhibit No. 78
A&P warehouse purchases, Liquid Household Bleaches

FEDERAL TRADE COMMISSION
DATE 2/10/59 WITNESS
ACE REPORTING CO. Official Reporter
By

RX-78

TOTAL U.S.

A&P WAREHOUSE PURCHASES

LIQUID HOUSEHOLD BLEACHES - 32 OZ. EQUIV. UNITS

	Clorox	Bright Sail	% Bright Sail Is of Clorox
1st 1/2 1957	14, 372, 416	12, 093, 060	84%
2nd 1/2 1957	15, 799, 324	13, 734, 146	87%
1st 1/2 1958	14, 563, 540	12, 913, 268	89%

FEDERAL TRADE COMMISSION
DOCKET NO. 82
IN THE MATTER OF Liquid Bleach
DATE 1/5/59
ACE REPORTING CO., Official Reporter
By

FTC-82

KROGER COMPANY (CHICAGO DIVISION) SALES OF LIQUID BLEACHES

GALLON EQUIVALENTS

1956

	Clorox Gallons	Share	Linco Gallons	Share	Fleecy White Gallons	Share	Sav-A-Day Gallons	Share	Total
Quarts	29436	37.5%	27633	35.1%	21519	27.4%	-----	-----	78588
1/2 Gal.	28827	31.1	37536	40.6	26157	28.3	-----	-----	92520
Gal.	20492	24.0	42788	50.0	-----	-----	22208	26.0	85488
Combined	78755	30.7%	107957	42.1%	47676	18.6%	22208	8.6%	256596

1st Eight Periods 1957 (Jan. - Aug.)

	Clorox Gallons	Share	Linco Gallons	Share	Fleecy White Gallons	Share	Sav-A-Day Gallons	Share	Total
Quarts	19284	40.3%	16299	34.0%	12324	25.7%	-----	-----	47907
1/2 Gal.	18966	33.2	22365	39.2	15762	27.6	-----	-----	57093
Gal.	14996	24.9	27736	46.0	-----	-----	17580	29.1	60312
Combined	53246	32.2%	66400	40.2%	28086	17.0%	17580	10.6%	165312

12 Months, Aug. 1957 - Aug. 1958

	Clorox Gallons	Share	Linco Gallons	Share	Fleecy White Gallons	Share	Sav-A-Day Gallons	Share	Total
Quarts	31551	35.1%	30570	34.0%	27708	30.9%	-----	-----	89829
1/2 Gal.	34881	32.5	40299	37.6	32004	29.9	-----	-----	107184
Gal.	31420	27.9	47292	41.9	-----	-----	34016	30.2	112728
Combined	97852	31.6%	118161	38.1%	59712	19.3%	34016	11.0%	309741

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Respondent's Exhibit No. 82
Kroger Company (Chicago Division) Sales of
Liquid Bleach

Respondent's Exhibit No. 94
Nielsen Food Index, Total Liquid Bleach Market—
Total U.S. (including Clorox brand share).
Aug. '52—July '58.

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NIELSEN FOOD INDEX

TOTAL LIQUID BLEACH MARKET - TOTAL U.S.

CONSUMER DOLLAR BASIS

CLOROX MARKET SHARE

	TOTAL LIQUIDS		CLOROX		
	SALES (000)	SHARE	SALES (000)	SHARE	CHANGE IN SHARE
Aug. '52 - July '53	$71,571	100.0%	$32,393	45.3%	
Aug. '53 - July '54	75,087	100.0	34,857	46.4	+1.1
Aug. '54 - July '55	82,070	100.0	38,627	47.1	+0.7
Aug. '55 - July '56	89,234	100.0	42,596	47.7	+0.6
Aug. '56 - July '57	95,948	100.0	46,470	48.4	+0.7
Aug. '57 - July '58	105,093	100.0	51,183	48.7	+0.3

Respondent's Exhibit No. 96
Nielsen Food Index Liquid Laundry Bleach Stock
Location Study

RX. 96

FEDERAL TRADE COMMISSION
DOCKET NO. 7.01 RESPONDENT EXHIBIT NO. 96
IN THE MATTER OF The Procter & Gamble Company
DATE 25 Nov 59 WITNESS Nielsen
ACE REPORTING CO., Official Reporters
By

NIELSEN FOOD INDEX

SPECIAL REPORT
PREPARED FOR
THE PROCTER & GAMBLE DISTRIBUTING COMPANY
On
STOCK LOCATION OF LIQUID LAUNDRY BLEACHES

AUGUST-SEPTEMBER 1958

NIELSEN MARKETING SERVICE®

"My experience in business is that *facts* are too little considered. It is difficult to get the facts—to get *all* the facts—but it is worth every effort. Then, with the facts before us, we try to approach a decision with an open mind."

Alfred P. Sloan, Jr.

A. C. NIELSEN COMPANY

NEW YORK CHICAGO MENLO PARK
OXFORD, ENGLAND TORONTO, CANADA SYDNEY, AUSTRALIA DUBLIN, EIRE
FRANKFURT/MAIN, GERMANY LUCERNE, SWITZERLAND BRUSSELS, BELGIUM
AMSTERDAM NETHERLANDS WELLINGTON, NEW ZEALAND STOCKHOLM, SWEDEN
NIELSEN COUPON CLEARING HOUSE—CLINTON, IOWA

366X

LIQUID LAUNDRY BLEACH STOCK LOCATION STUDY

	Per Cent of Stores Stocking Liquid Laundry Bleach		Per Cent of All-Commodity Dollar Sales done by Stores Stocking Liquid Laundry Bleach	
	Immediately Adjacent to Package Detergents or Toilet Soaps	Elsewhere in the Store	Immediately Adjacent to Package Detergents or Toilet Soaps	Elsewhere in the Store
All Stores.....	33.2%	66.8%	28.5%	71.5%
Chains.....	22.2%	77.8%	18.6%	81.4%
Independents.....	34.0	66.0	35.3	64.7
Super Large.....	34.2	65.8	33.7	66.3
Large.....	35.8	64.2	36.7	63.3
Medium.....	39.1	60.9	39.4	60.6
Small.....	31.2	68.2	32.1	67.9

J. BARTH & CO.

1957

R497

COMPANY C AND COMPANY P

Using dividends and earnings as the determinant, logical value of Company C in exchange for Company P would be as follows:

1. Dividends

$1.70 Co. C Dividend / $2.05 Co. P Dividend = .829, or .829 Co. P shares for 1.00 Co. C to allow Co. C stockholders the same yield they are now receiving.

2. Earnings

A. 1956 $2.70 Co. C Earnings / $2.98 Co. P Earnings = .904, or .904 Co. P shares for each 1.00 Co. C to allow Co. C stockholders equivalent earnings for 1956.

B. Average 3 Year Earnings 1954-56

$2.40 Co. C Average 3 Year Earnings / $2.85 Co. P Average 3 Year Earnings = .843 Co. P for each 1.00 Co. C

C. Average 5 Year Earnings 1952-56

$2.13 Co. C Average 5 Year Earnings / $2.56 Co. P Average 5 Year Earnings = .831 Co. P for each 1.00 Co. C

D. Estimated Current Year Earnings

$3.32 Co. C Estimated Current Year Earnings / $3.24 Co. P Estimated Current Year Earnings = 1.02 Co. P for 1.00 Co. C

E. Giving equal weight to A, B, C, and D (1956, average 3 year 1954-56, average 5 year 1952-56, and estimated current year earnings per share.

2A .904
2B .843
2C .831
2D 1.020
3.598 ÷ 4 = .899 Co. P shares for 1.00 Co. C share

3. Giving equal weight to dividends and composite earnings ratio (2E above), the result is .864 Co. P shares for each 1.00 Co. C share.

1. (Dividends) .829
2.E (Composite Above) .899
1.728 ÷ 2 = .864

366X

Respondent's Exhibit No. 97, for Identification
(not admitted into evidence)
Memorandum J. Barth & Co. 1957 (prepared by M. Hellman)

RX108

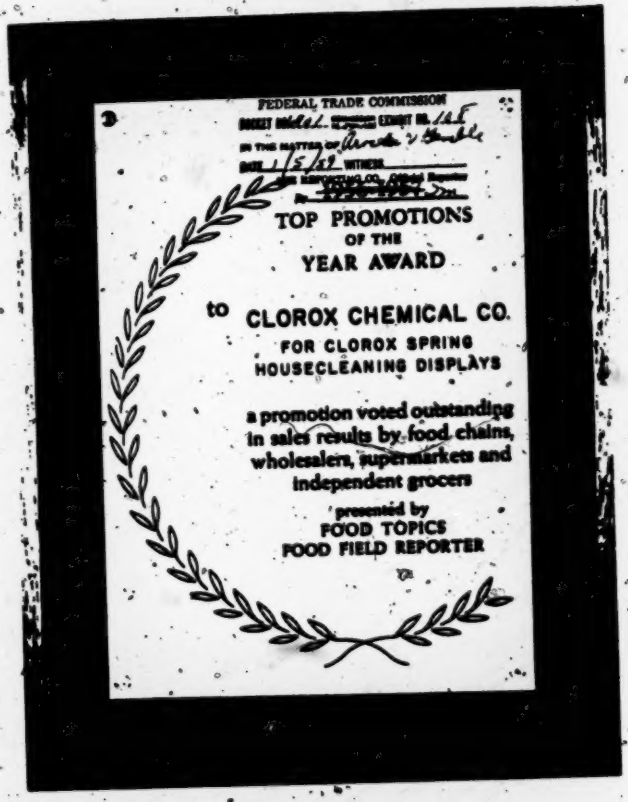
GROCERS VOTE TOP PROMOTION AWARD TO CLOROX

THE 1957 CLOROX SPRING HOUSE-CLEANING PROMOTION has just been chosen by thousands of America's leading grocers as one of the top two *most effective in-store promotions of the year!*

A RECORD NUMBER OF MEMBERS OF THE FOOD TRADE participated in the balloting conducted by *Food Topics* and *Food Field Reporter* magazines in a nationwide survey covering period from July 1, 1956 through June 30, 1957. The votes... all by voluntary write-in...were cast by more than 4,200 men operating or serving over 120,000 retail food outlets, each grossing at least $500,000 a year.

COMPETITION WAS INTENSE! An estimated 16,000 food store promotions were judged "in action" by the trade during the year. And it was from this tremendous number that the Clorox *award-winning promotion* was selected for honors...

ON THE BASIS OF OUTSTANDING SALES RESULTS!





Remember:* CLOROX IS A WINNER YEAR IN, YEAR OUT... *America's largest-selling bleach and household disinfectant!

That's why it pays to make sure that Clorox is featured *consistently* in store advertising and mass displays... that Clorox is given the shelf facings its sales warrant ...and that ample reserve stocks are always available to avoid losing profitable Clorox sales.

3692

Respondent's Exhibit No. 112A-U
United States Manufacturers of Liquid Bleach

R-112

UNITED STATES MANUFACTURERS OF LIQUID BLEACH

MANUFACTURER	BLEACH BRAND
*ABC Bleach Co. (Parent) 6651 Tireman Avenue Detroit, Michigan	ABC
Acqua-Lina Mfg. Co. 363-72 Cumberland Street Brooklyn 17, New York	Acqua-Lina
Active Bleach Co. 11811 Beulah Avenue Cleveland, Ohio	Active
Adirondack Chemical Co. 222 Margaret Street Plattsburgh, New York	X-Chlor
Allevato, Joseph 330 Glenn Street Johnstown, Pennsylvania	Snow White
American Bleach Manufacturing Company 1524 Arcade Avenue Louisville, Kentucky	Easy Way
American Brands Co. 1812 Ellen Road Richmond, Virginia	Washo
Anderson, E. H. 5115 N. E. Cleveland Portland, Oregon	Dan-Dee
Aunt Lena Chemical Product Co. 3215 S. Princeton Chicago, Illinois	
Austin, James, Company Valencia Road Mars, Pennsylvania	Sta-Brite Tops Austin's A-1 Sani-Clos Clover Farms

370X

*White Flash Cleanser Co. (Subsidiary)

FEDERAL TRADE COMMISSION
DOCKET ... 112-4
IN THE ...
DATE 1/27/59
ACCEPTED FOR ... EXHIBIT
BY ...

4931

R-112-B

112-B

MANUFACTURER	BLEACH BRAND
B & W Bleach Co. Middleboro, Massachusetts	Gold Crown
Baldwin Chemical & Specialty Co. 81 Elsie Street Everett, Massachusetts	Best Wash
Barton Chemical Co. 1230 W. 46th - U. S. Yards Chicago, Illinois	Sav-A-Day Little Mommie Progressive
Biddeford Specialty Co. Biddeford, Maine	Purol
Bielidlo Packing Co. 21 - 24th Street Brooklyn, New York	Bielidlo
Bleach Products Co., Inc. 517 Russell Street Charleston, West Virginia	Blink
Bleaching Products Mill Mill Street Ashland, New Hampshire	Wonder
Blue Diamond Co. (No address - bleach sold off trucks) Brooklyn, New York	Blue Diamond
Blue Magic, Inc. (Owned by Prescott Company) 27 - 8th Street Passaic, New Jersey	Apex Bright Sail Speed Up White Magic
Blue Magic Company Lodge & Spruce Streets Wilson, North Carolina	Easy Monday Spotless
Blue Ribbon Packing Co. 1417 Bronx Avenue Bronx, New York	Morex
Brite House 1050 W. Kinzie Chicago, Illinois	Stately
Brooklyn Laundry Prod. Co. (No address - bleach sold off trucks) Brooklyn, New York	Lav-X

R-112-C

112-C

MANUFACTURER	BLEACH BRAND
Caray Chemical Corp. Railroad Street Bridgeport, West Virginia	Aunt Jane's
Carrier Chemical Co. 71 Kaveny Avenue Chicopee, Massachusetts	Carrier Greylock
Caso, Michael 41 French Street Watertown, Massachusetts	Caso's Bleach
Cato Chemical Co. 1728 Mary Street Honolulu, T. H.	M. K. Brand
Champion Bleaching Water Co. 36 Dartmouth Street Watertown, Massachusetts	Champion
Christy's Bleaching Water 400 North Main Street Brockton, Massachusetts	Christy's
Clean-O Chemical Co. 1307 Taylor Avenue Bronx, New York	Clean-O
Clorinated Products 3919 E. Baltimore Street Baltimore, Maryland	Laundre Lon-Dre' Ecco Fyne-Tex Gay Speed Up Big Valu Victory
Cloro Bleach Co. 44 East 1st Street New York, New York	Cloro
Clorolene Cleanser Co. 181 Louisiana Avenue Detroit, Michigan	Super Clorolene Cleanser
Coastal Chemical Co. Telfair Road Savannah, Georgia	Clo-White Dixie Home
Columbia Bleach Co. 12 Jewet Place Utica, New York	Columbia

372X

R-112-D

112-d

MANUFACTURER	BLEACH BRAND
Commercial Chemical 1021 Summer Street Cincinnati, Ohio	Del Haven Dot Parkview White Cap Best White
Cosmo Washing Chemical Co. 82 Cooper Street Brooklyn, New York	Cosmo
Crescent Bottling Works Dewey Avenue Little Falls, New Jersey	Blue Ribbon Easy Bleach Spotless White
Cumberland Mfg. Co. 501 - 25th Avenue No. Nashville, Tennessee	Britex
Cumberland Products Co. P. O. Box 123 Fayetteville, North Carolina	Super Bleach
Danais, John, Co. 229 Shasta Street Manchester, New Hampshire	Danais
Deer Head Chemical Co. 92 Third Street Everett, Massachesetts	Deer Head
Delta Chemical Mfg. Co. 2101 Washington Blvd. Baltimore, Maryland	Capital Blue Grass White O Oxon Sun Pride Sunol Tru-White Del-Tox Pappas
Detelco Lab. 1453 Holden Avenue Detroit, Michigan	Gordon's Fluffy Tom Boy O'Brien's American Cleanser Happy Holiday
Dolly Adams Food Corp. 15132 Oxnard Road Van Nuys, California	Dale's Shopper's Lance

R-112-E

112-E.

MANUFACTURER	BLEACH BRAND
Don's Chemical Co. Anchorage, Alaska	Don's Arctic
Du-Well Products Co. 525 Chicopee Street Willimansett, Massachusetts	Du-Well Big Y
Eagle Chemical Works Rear 1610 Washburn Street Scranton, Pennsylvania	Eagle Soltex
Electro Bleach Products Co. 1628 West 134th Street Gardena, California	Electro
Ellwood City Chemical 518 Glenn Avenue Ellwood City, Pennsylvania	Shirley Ann
Erbrich, J. H., Products Co. 1120 E. 32nd Indianapolis, Indiana	Blue Ribbon Ey-Clo Jackson Special Little Mommie Maloley's Ozark Pay Day Re Joyce Time Saver Little Sport Mary Ann
E-Z Bleach Inc. 94 Sawyer Street New Bedford, Massachusetts	E-Z
Fidelity Bleach Co. 5238 W. Washington Chicago, Illinois	
Fischer, B., & Company 585 Gerard Avenue New York, New York	White Arrow
G & G Chemical Co. Highpoint Avenue Hopewell, Virginia	

R-112.3

112-3

MANUFACTURER	BLEACH BRAND
Gardiner Mfg. Co. 160 Van Rensselaer Buffalo, New York	"101"
Golden Bleaching Water Co. 185 Park Street Medford, Massachusetts	Golden
Gonnella, Severino 413 Woodruff Avenue Syracuse, New York	Clean-All
Gotham Chemical Co. 183 Trauntman Street Brooklyn, New York	Gotham
Griffin, Donald E. 1946 W. 69th Chicago, Illinois	
Griffin Groceries 111 S. Cherokee Muskogee, Oklahoma	Griffin's
Grocers Products Co. 780 Madison Street Brooklyn, New York	Ajax
Herman, Morton & Co. 1539 N. Throop Chicago, Illinois	Good Kind
Hickory Chem. Laboratories 787 Crooked Lake Angola, Indiana	Wah-Wte
*Hilex Co. (Parent) 319 E. Kellogg Blvd. St. Paul, Minnesota	Energy Laundrex Le-Zure Hilex
*Home Chemical Company (Subsidiary) 319 E. Kellogg Blvd. St. Paul, Minnesota	Di-Zo
Home Needs Company (Div., Safeway Stores) 5201 East 60th Street Los Angeles, California	White Magic

375X

* Home Chemical Company (Subsidiary)
**Hilex Co. (Parent)

R-112-G

112-G

MANUFACTURER	BLEACH BRAND
Hood Chemical Co. 80 Rittenhouse Place Ardmore, Pennsylvania	Beacon Bright Sail Hood 33 Moonshine Speed-Up Trexler Park White Arrow Sun Glo Miracle
Hulman & Co. 900 Wabash Avenue Terre Haute, Indiana	
Hydrox Chemical Co. of Illinois 225 W. Huron Chicago, Illinois	
Hygiene Chemical Co. 1532 High Street Richmond, Virginia	Hygiene
***Hy-Lo Chemical Co. (Parent) 359 N. E. Harrison Minneapolis, Minnesota	Hy-Lo
Hy-Tex Chemical Co. 225 Delancy Street Newark, New Jersey	Hy-Tex
Ideal Laboratories 3033 Preble Avenue Pittsburgh 33, Pennsylvania	Ideal
Imperial Products Co. 1600 Fontain Street Philadelphia, Pennsylvania	
Independent Chemical Co. 70-30 79th Place Brooklyn, New York	Independent Wash Compour...
Inter Island Chem. Works 518 Ward Avenue Honolulu, T. H.	Bleachit
International Chemical Water Co. 8222 Eastwick Avenue Philadelphia, Pennsylvania	Fair Trade

***Vel Tex Chem. Co. (Subsidiary)

R-112-N

112-N

MANUFACTURER	BLEACH BRAND
Island Chemical Co. 1350 Kamaile Street Honolulu, T. H.	Bleacherex
Javelux Products Co. 511 Prescott Avenue Scranton, Pennsylvania	Javelux
Jefferson Food Products Co. 1542 Fishburn Avenue Los Angeles, California	All American Bill's Cloe's El Rancho Food Giant Fox Gateway Hiram's Iris Jim Dandy Kory's S & F Whitex
Jerry Lee Chemical Co. North Palafox Street Pensacola, Florida	White Swan
Keller Products Co. 707 S. Front Street Columbus, Ohio	Dag Sun-Glo
Kitzinger Company 106 River Street Hollidaysburg, Pennsylvania	Sno-Whyte
Kleen Brite Chemical Co. 22 Nash Street Rochester, New York	Bright Sail Pleezing Speed Up Sunny Sol Superior
Klor-X Products Co. 5183 S. Leamington Chicago, Illinois	X-It
Koel Products Co. 5506 Mitchell Street Detroit, Michigan	

R-113-4

FEDE... COMMISSION
DOCKET NO. ... EXHIBIT NO. 112-A

MANUFACTURER	BLEACH BRAND
K O K Cleanser Co. 861 Camden Avenue Columbus, Ohio	K O K
Konco & Sons 7460 S. Vincennes Chicago, Illinois	
Kormon Water Co., Inc. 90 Howard Street Fall River, Massachusetts	Kormon Water
Lady's Choice Foods 4578 Worth Los Angeles, California	King Cole Hy-Pro Mayfair Sani-Clor Lady's Choice
La Pulito Chemical Co. 223 Charles Street Moosic, Pennsylvania	La Pulito
Laundry White Lab. 2591 E. Grand Blvd. Detroit, Michigan	Laundry White
Lavo Company 1243 N. Fifth Milwaukee, Wisconsin	Mag
B. Leto Packing Co. 2120 Port Street New Orleans, Louisiana	Leto
Lily White Products Co. 635 W. 47th Chicago, Illinois	
Linco Products 2155 W. 80th Chicago, Illinois	Bright Sail Linco Laundry Maid
Linen White Corp. M. L. Freeman & C. M. Dossett Lakeview Road Hattiesburg, Mississippi	Linen White
Linen White Products Co. P. O. Box 114 Autryville, North Carolina	Linen White

R-112-J

112-J

MANUFACTURER	BLEACH BRAND
Line-X Company, Inc. 1602 East Street Iola, Kansas	Line-X
Lisciva Co. 824 Burnet Avenue Syracuse, New York	Lisciva
Lite House Bleach Co. 22549 Cedar Point Road Cleveland, Ohio	Lite House
Londra Bleach Products 2659 S. St. Louis Chicago, Illinois	
Lorenz, Harry H., Laboratories 1650 Ballinger Avenue Pittsburgh 10, Pennsylvania	Lorenz
Lunox Chemical Works 700 Mill Street Avoca, Pennsylvania	Blue Kitchen Clover Farm Energy High Mark Lehigh Valley Lunox Wilco Zep
Made-Rite Products Co. 262 North Main Street Manchester, New Hampshire	Gagne Made Rite Laungene Warex Pennant
Magix Chemical Co. 107 Hickory Street Scranton, Pennsylvania	Magix
Malamisura, A., & Sons 4709 S. Avenue, Extension Youngstown, Ohio	
Mar-Glo Chemical Company 1501 Navarre Road Canton, Ohio	Queen
Marquette Chemical Corp. 1795 Creston Muskegon, Michigan	Chlorite
Master X Bleach Company 642 N. Tillamook Portland, Oregon	Master X

R-112-TC

112-K

MANUFACTURER	BLEACH BRAND
McDonough Products Co. 3221 S. Cushman Avenue Tacoma, Washington	Kleen-Eez
Mel-O-Mix Co. 432 East 16th Street New York, New York	Jay-O-Mix
Mezzacappa Products Co. 17510 St. Clair Avenue Cleveland, Ohio	Mother's Washing
*Miami Products & Chemical Co. (Parent) 520 Lonoke Street Dayton, Ohio	Jack & Jill
Miracle Bleach Water Co. No. Windham, Maine	Miracle
Mission Chemical Co. 469 Tenth Avenue San Diego, California	Tell
Mitchelite Laboratories 702 San Fernando Street San Antonio, Texas	
Mon-D-Aid & Clenit Company 400 State Street Butler, Pennsylvania	Mon-D-Aid
Moore, A. F., & Co. 538 Franklin Street Worcester, Massachusetts	Sno-Boy
Morning Star Washing Fluid Co. 24 East 31st Street Bayonne, New Jersey	White Star
Netherson, Charles H., So-Wite 2060 Singleton Blvd. Dallas, Texas	So-Wite Bright Sail
Nevada Specialty Co. Henderson, Nevada	Bleech-eze
New Bright Chemical Co. 7 N. Mississippi Avenue Atlantic City, New Jersey	New Bright Tru Valu

*Royal Souders, Inc. (Subsidiary)

380X

R-112-K

FEDERAL TRADE COMMISSION
DOCKET NO. C-[illegible] 112-2

MANUFACTURER	BLEACH BRAND
New Castle Chemical Company Sampson Street Extension New Castle, Pennsylvania	Pennsylvania
New Castle Chemical Fluid Co. 413 Denver Avenue New Castle, Pennsylvania	Varachina
New England Bleaching Auburn, Maine	Blue Bell New England
No Boil Fluid Chemical Co. 125 Crescent Street Jamestown, New York	No-Boil
No-Name Products, Inc. 1218 W. Pierce Street Milwaukee, Wisconsin	
Norris Chemical Co. Hopewell, Virginia	White Basket
Northern Chemicals, Inc. 27 Pine Street New Haven, Connecticut	Ideal
Novel Wash Co., Inc. 4045 Garfield Avenue St. Louis, Missouri	Novel
Novel Wash Products Co. 491 E. North Avenue Milwaukee, Wisconsin	Novel Wash High Power
No-Worry Chemical Co., Inc. 41 Manufacturers Place Newark, New Jersey	No-Worry
Nu-Kleenzit Co. 603 Arthur Street, S. W. Atlanta, Georgia	Nu-Kleenzit
Nu Way Bleach Co. Eristow, Oklahoma	Laundrex Nu Way
O-So-White Bleach 17206 Lotus Drive Cleveland, Ohio	O-So-White

R-112-77

112-77

MANUFACTURER	BLEACH BRAND
O-So White Products Co. 3766 W. 38th Chicago, Illinois	
P & G Bleaching Water Co. 185 Park Street Cambridge, Massachusetts	P & G
Patterson Laboratories 11930 Pleasant Detroit, Michigan	Patterson's
Peoria Bleach Co. 3401 N. E. Adams Street Peoria, Illinois	Peoria
Piedmont Chemical Co. Old Mount Holly Road Charlotte, North Carolina	Bright Sail Clo-White P. C. Bleach
Polar Chemicals Inc. 144 Howe Street Lewiston, Maine	Polar Bleach
Police Products 920 Catherine Street Utica, New York	Police
Prescott, J. L., Co. 27 Eighth Passaic, New Jersey	A. F. D. Apex Blue Magic Bright Sail Buddy Capital Clover Farm Co-op Dazzle Elm Farm Energy Fyne-Tex Globe Grisdale Hillbrite Keyco Kings Lily of the Valley Little Mommie Logon Mrs. Lane's Nako Penn Treaty Pleezing Plus Queen's Taste

382X

R-112-71

112-71

MANUFACTURER	BLEACH BRAND
Prescott, J. L., Co. (Cont'd)	R. G. E
	Ramapo
	Rainbow
	Shoprite
	Speed-Up
	Stop & Stop
	Sun Dial
	Sun Pride
	Sunny Day
	United
	Unity
	Valley Forge
	White Dove
	Work-Wiz
Presto Chemical Co. 432 East 162nd Street Bronx, New York	Presto
Price, John, Div. of Perloff Bros., Inc. Cayuga & Witaker Streets Philadelphia, Pennsylvania	Garden
Proxite Products, Inc. 5102 Foster Avenue Brooklyn, New York	Spinners Key Bonnie Fair Mart
Pure White Washing Fluid Company 324 Sims Ellwood City, Pennsylvania	Pure-White
Purex Corporation, Ltd. 9300 Rayo Avenue South Gate, California	Alpha Beta Bright Sail Chef's Aid Cole's Cottage Crawford's Del Haven Elco Energy Finer Freeman's Fleecy White 4-X Hi Power Household Hy Power Kalex Market Basket McCoy's McDaniel's Nu Clox

383X

R-112-0

112-0

MANUFACTURER	BLEACH BRAND
Purex Corporation, Ltd. (cont'd)	Pheasant Purex Ralph's Soft White Sonny Boy Sparkling White Sunshine Wash Tex Wash Wite W. P. Panex
Quick Labtrs. & Sales Co. 1341 E. 75th Chicago, Illinois	
Rad, Inc. 1834 Broadway New York, New York	Rad
Radiant Wash Solution Co. 421 2nd Street Olean, New York	Presto Radiant
Ramona & Perez 2000 Bronx Street Bronx, New York	R & P
Record, Earl R. 2327 S. St. Louis Chicago, Illinois	
Red Circle Products 234 Oraton Street Newark, New Jersey	Red Circle
Red Label Products 34 East Kingston Street Lawrence, Massachusetts	Londaul
Reed Chemical Co. 3415 N. Rorer Street Philadelphia, Pennsylvania	Arleen K & M
Reina Chemical Co. Ferry Road Lewiston, Maine	Reinroc

R-112-P

112-P

MANUFACTURER	BLEACH BRAND
Re-Nu Bleach Co. 4719 Clinton Road Cleveland, Ohio	Re-Nu
*Revell, P. H., Co. (Subsidiary) 3 Green Street Woburn, Massachusetts	Co-op Bleaching Nation Wide Beacon Supreme
Rex-O-Lav Products 157 West Clinton Street Poughkeepsie, New York	Rex-O-Lav
Riddle's Old Mission Bleach Co. 827 Broer Toledo, Ohio	Riddle's Old Mission
Roisman Products 207 So. Compress Oklahoma City, Oklahoma	Durox Nu Cloz Santa Fe
Roman Cleanser Co. 2700 E. McNichols Road Detroit, Michigan	Roman Cleanser No Boil Fyne Tex "525"
Rose Lux Chemical Co. 301 Belmont Avenue Brooklyn, New York	Associated AFS Rose-X Salley Shopwell So-White Dan's
Rox Chemical Mfg. Co. 512 E. 8th Street Richmond, Virginia	Rox
**Royal-Souders, Inc.. (Subsidiary) 520 Lonoke Street Dayton, Ohio	Chlorite Energy ~~No-Boil~~
S. S. Cleanser Co. 1700 E. Broadway Des Moines, Iowa	Des Moines Cleanser Miracle Bleach
Saber Chemical & Supply Co. 32 Hood Road North Tewksbury, Massachusetts	Saber
Sacco, C. A., Chemical Co. 1247 N. Monticello Chicago, Illinois	
Sana Bleach Products Co. 385X 1257 Plainfield Avenue Cleveland, Ohio	Sana-Bleach

*Zippy Products, Inc. (Parent)
**Miani Products & Chemical Co. (Parent)

R-112-G

MANUFACTURER	BLEACH BRAND
Sandis Products 3300 N. Kilbourn Chicago, Illinois	
Sapo Elixir Co. 800 E. Big Bend Road St. Louis, Missouri	Bright Sail Energy Glo-X Hy-Klas Sapo Sweet Home Wash White White Top So White
Savol Bleach Co. 433 Park Avenue East Hartford, Connecticut	Savol
Schwartz Co., Inc. Schwartz Chemicals 1600 East 11th Street El Paso, Texas	Gleam Aid
Serge, Daniel 1359 Locust Avenue Fairmont, West Virginia	Why Worry
Shirox Chemical Company 5403 Herbert Way Pittsburgh 7, Pennsylvania	Shirox
Sinclair Mfg. Co. Brown and Woodland Avenues Toledo, Ohio	SIB Sunrae White Cross White Monday
Smith Chemical Products 518 Kuwili Street Honolulu, T. H.	Bleach
Smoky Mt. Distributors 10 Sweeten Creed Road Biltmore Asheville, North Carolina	
Sno-ee Products 313 North Main Street Punxsutawney, Pennsylvania	Sno-ee
Sno-Lene Products Co. 1459 Nine Mile Road Ferndale, Michigan	Sno-Lene
Snow Clean Bleach Company 3311 Davis Street P. O. Box 21055 Houston, Texas	

386X

R-112-R

MANUFACTURER	BLEACH BRAND
Snowdrift Washing Fluid 63 Heaton Avenue Norwood, Massachusetts	Snowdrift
Snow White Chemical Co. 1270 Broadway New York, New York	Snow White
So White Plover, Wisconsin	So White
So-Hy Products, Inc. Asheville, North Carolina	So-Hy
Spark-O-Bleach Washing Solution 3337 West 59th Street Cleveland, Ohio	Spark-O-Bleach
Speedy Cleanser Bleach Co. 6520 Greenfield Ave. Detroit, Michigan (Dearborn)	Speedy
Starlight Chemical Co. 16 Cornella Street Pittston, Pennsylvania	Starlight
Starlight Products 24 Clinton Avenue Brockton, Massachusetts	Bleacho
Star Water 67 Harrison Avenue Milford, Connecticut	Star Water
Stavite Chemical Co. 1101 South Streeper Street Baltimore, Maryland	Stavite
Sunlight Chemical Corp. 55 Pawtucket Avenue East Providence, Rhode Island	Sunlight Moonlight Wesco
Sunny White Products 2124 W. Pierce Chicago, Illinois	
Sun-Ray Clore Products Co. 3233 W. Potomac Chicago, Illinois	
Suntex Chemical Co. 4001 Main Street Philadelphia, Pennsylvania	Suntex
Superior Cleanser Co. 4425 Cadillac Detroit, Michigan	387X Superior
Swartz, Orville J., Co. 5217 Lake Melrose Park, Illinois	Pearl White Bleach

R-112-8

MANUFACTURER	BLEACH BRAND
Sweet Clean Products Co. 13601 Roseland Avenue Cleveland, Ohio	Sweet Clean
T & V Products Co. Providence, Rhode Island	Moderne
Tardiff Bros., Inc. 221 Goodel River Rouge, Michigan	Javel Cleanser
Tesco Chemicals, Inc. 1575 Northside Drive, N. W. Atlanta, Georgia	Tes-Ted
Texize Chemical Co. Laurens Road Greenville, South Carolina	Bright Sail Dixie Home Texize White Arrow
Thompson's Bleach All 1935 Fernhill Toledo, Ohio	Thompson's Bleach
Thoro Products Co. 3240 Larimer Denver, Colorado	
Thrifty Laundry Prod. Co. 1727 Carpenter Street Philadelphia, Pennsylvania	Thrifty Fyne Tex
Tileston Chemical Specialty Co. 71 Tileston Street Everett, Massachusetts	Dandy Lily-White
Tobin & Mesirow Products 3554 Hunter Street Los Angeles, California	Finex Sav-Mor
Toc's Products, Inc. 145 Seymour Street Syracuse, New York	Toc's
Trager Mfg. Co. 1015-1029 Price Scranton, Pennsylvania	Clo-Wash Dr. Trager's

R-112-D

DOCKET NO. 6901 — 112-D

MANUFACTURER	BLEACH BRAND
Uddo, F., & Sons 200 Bienville Street New Orleans, Louisiana	Sure-Klean
Universal Bleach Co. 2416 65th Street Brooklyn, New York	La Blancalina
*Vel Tex Chem. Co. (Subsidiary) 359 N. E. Harrison Minneapolis, Minnesota	Kleen-Eze
Victors 559 Wells Street Steubenville, Ohio	Victors Quick Wash
Wagner's Soap & Bleach Co. 920 East Ohio Street Pittsburgh 12, Pennsylvania	Wagner's
**White Flash Cleanser Co. (Subsidiary) 6651 Tireman Avenue Detroit, Michigan	White Flash
White Swan Products Lewiston, Maine	White Swan
White Swan Washing Fluid & Mfg. Co. 10 Joseph Street Moonachie, New Jersey	White Swan Washing Fluid
Whytee Products - Frank Lento Manufacturer of Household Products 208 Ridge Avenue Punxsutawney, Pennsylvania	
Wilbert Products Co., Inc. 805 E. 139th Street New York, New York	Javex Liquid Bleach
Witch City Bleach Water Co. 38 Margin Street Salem, Massachusetts	Witch City
Wonder Chemical Co. 1520 Washington Avenue Philadelphia, Pennsylvania	Albro Alto Dove Fairlawn Garden Il Primo Kellogg

*Hy-Lo Chemical Co. (Parent)
**ABC Bleach Co. (Parent)

R-112-U

No 6901 Supreme Exhibit No 112-U

MANUFACTURER	BLEACH BRAND
Wonder Chemical Co. (Cont'd)	Lesters Best
	Montco
	Pantry Pride
	Penn Treaty
	Poet
	Relco
	R. G. E
	Richmond
	Rival Blue
	Span
	Sylvia
	Tru-Valu
	Tux
	Unity
Wonder White Chemical Co. 863 Metcalf Street Wilkes Barre, Pennsylvania	Central Town Topic Wonder White
Woodbury Distributing Co. 310 North High Street Baltimore 2, Maryland	Double OX
X-Cello Co. 2177 West 44th Street Cleveland, Ohio	X-Cello
Zero Bleach, Inc. 780 East 212th Street Cleveland, Ohio	Zero
*Zippy Products, Inc. (Parent) 3 Green Street Woburn, Massachusetts	Zippy

* Revell, P. H., Co. (Subsidiary)

Respondent's Exhibit No. 114
Purex Corporation Ltd. Annual Report, Year Ended June 30, 1958

RX 114

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

ATTESTATION

I HEREBY ATTEST that attached is a full, true and complete copy of:

Annual report to stockholders for year ended June 30, 1958 filed with this Commission October 13, 1958 by Purex Corporation, Ltd. (File No. 2-2668), pursuant to Instruction F of Form 10-K as promulgated under the Securities Exchange Act of 1934, as amended.

FEDERAL TRADE COMMISSION
DOCKET NO. [illegible] EXHIBIT NO. 114
IN THE MATTER OF [illegible] Company
DATE 1/9/58
ACE REPORTING CO., Official Reporter
By [illegible]

on file in this Commission

November 10, 1958
(Date)

Nancy H. Mattila
NANCY H. MATTILA
DEPUTY RECORDS OFFICER

It is hereby certified that JAMES HIMLE, Records Officer of the Securities and Exchange Commission, Washington, D.C., which Commission was created by the Securities Exchange Act of 1934 (15 USCA Sec. 78a et seq.), is official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 410 of the Securities Exchange Act of 1934, and was such official custodian at the time of executing the above attestation, and that Nancy H. Mattila, Chief, Section of Docket, Mail and File is his deputy.

391X

By the Commission
Orval L. DuBois
Secretary

To the Stockholders and Employees of Purex Corporation, Ltd.:

The fiscal year of 1957-58 was one in which most American corporations were confronted with a period of declining sales and earnings. Purex Corporation, Ltd., in common with its competitors in the household cleaning field, demonstrated during that period its strong resistance to any general business recession. Consumption of household cleaning products per capita in the United States declined only slightly during the recession, and the net effect of this decline was partially offset by population growth.

Consequently I am pleased to report to you that this has been another year of growth in both sales and profits for your Company. Sales amounted to $54,112,988, an increase of about $3.8 million, or about 7%; and a new high for Purex. Net profits after taxes reached a record figure of $2,094,274.

Your Board of Directors felt justified, therefore, in increasing the regular quarterly cash dividend from 25¢ to 27½¢ per share, or a new annual rate of $1.10 per share. In addition, the Board declared a 4% stock dividend, payable September 30, 1958 to stock of record September 15th, in conformity to your Company's policy of augmenting cash dividends with a stock dividend, the amount being based upon earnings.

The acquisition of Allen B. Wrisley Company, a long-established and prominent manufacturer of soap and toiletry products with headquarters in Chicago, was completed June 5, 1958 through an exchange of one share of Purex stock for each six shares of Wrisley stock. About 98% of the Wrisley shares were exchanged for 49,145 Purex shares. This acquisition added about 600 new shareholders, increasing our total number of shareholders to over 4,000, and I would like to express formally a sincere welcome to these former Wrisley shareholders on the part of myself and my associates, and hope that they will find their participation in Purex ownership increasingly profitable in the future.

Wrisley's sales last year were about $6,500,000, but the Wrisley sales figures were not included in your Company's 1957-58 total of $54,112,988. The Wrisley line adds a number of other nationally-distributed products to the Purex line, not only in the household cleaning field but also in the drug, variety, and department store toiletries area. For the first time in our history we are now expanding into a marketing field outside the household cleaning industry, although it is closely related. We anticipate the opportunity not only of making substantial cost reductions in manufacturing, distributing and marketing Wrisley products but of securing added sales volume through our larger marketing organization when Wrisley grocery products are integrated into our sales operation.

We welcome to the Purex organization Mr. Wrisley B. Oleson, President of Allen B. Wrisley Company, and his associates. Mr. Oleson will head the Wrisley Division, selling to Drug, Department and Variety stores.

As our marketing opportunities, products, manufacturing plants, and sales territories increase, the importance of developing a competent organization of men and women to assume the increased burden of responsibilities increases also. Between 1947 and the past fiscal year, Purex sales increased over 600%. In that same period, top executive operating management increased in number only slightly, but the middle management group has expanded greatly. I cannot over-emphasize that the future growth of Purex rests largely upon the shoulders of this management group.

From them we must not only have efficient and aggressive performance in current operations, but must also develop our top management and executives of the future. I think you will be interested in visualizing this management team for yourself, and that is the reason we are including on the last two pages of this annual report a list of the people on the Purex management team. Knowing these people as individuals, we are confident Purex has a sound foundation for future growth. As Purex grows, they must grow, and it is the responsibility of Purex top management to see that they reach the full potential of their talents through training and incentive.

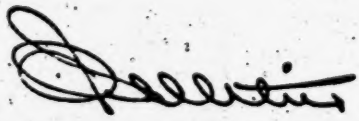
There are innumerable examples of the accomplishments of our management team in cost savings and product improvement which have contributed to Purex earnings and consumer acceptance.

As one example of the capacities of this group, I would like to point to an accomplishment that represents the first major improvement in the packaging of liquid bleach in the industry's history. One of the problems of the housewife using bleach in the home always has been the awkwardness and risk of handling the bleach bottle, especially the heavy half-gallon and gallon sizes. A task force of middle management people at Purex tackled this problem over two years ago, and despite seemingly insurmountable obstacles, they perfected the Purex patented "coffee-pot" or "pistol-grip" handle, which at last makes handling even a heavy gallon bottle of bleach safe and easy.

During the year the stockholders elected as a new member of the Board of Directors, to fill a vacancy, Mr. James A. Barnett, Vice President of Rexall Drug Company and formerly an executive for many years at Lever Brothers. We feel that Mr. Barnett, from his wealth of experience in the soap and toiletries marketing fields, can contribute greatly to the future guidance of Purex policies in both areas.

Purex stockholders residing east of the Rockies will be glad to know that Purex stock has been qualified by the National Association of Securities Dealers for listing in the national over-the-counter market which is quoted daily in all editions of the *Wall Street Journal*.

Once again I would like to express my appreciation to the 1800 employees of Purex Corporation, Ltd. for a job well done. They have again demonstrated their ability to cope with the many problems of change and adjustment that are the inevitable accompaniment of business growth.



CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER

New Sales and Earnings Records

Consolidated net sales of the Company for the year ended June 30, 1958 were $54,112,988, an increase of $3,819,491 or 7% compared with sales of $50,293,497 reported for the preceding year.

Consolidated net earnings of the Company for the fiscal year ended June 30, 1958 were $2,094,274, or $2.51 per share on the average number of shares outstanding during the year. This compares with earnings of $1,908,848 reported by the Company in the preceding year, equal to $2.32 per share on the average number of shares outstanding. Both per share figures are after giving effect to stock dividend shares issued in September, 1957.

It should be noted that the figures above do not include operations of Allen B. Wrisley Company. Wrisley's operating results will not be consolidated with those of Purex until July 1, 1958, the beginning of our new fiscal year.

Finances

Our financial position improved during the fiscal year just closed. Current assets, including cash and government obligations of $3,119,318, amounted to $14,779,876. Current liabilities, including liabilities for income taxes of $1,816,439, amounted to $6,432,315. Net working capital amounted to $8,347,561, which was approximately $1,947,561 in excess of the minimum level required to be maintained under the terms of our long-term loan agreement with The Prudential Insurance Company of America. The preceding amounts in this paragraph include the respective figures of Allen B. Wrisley Company.

Dividends

On July 30, 1958 the Board of Directors increased effective September 30, 1958 the quarterly dividend rate from 25c to 27½c per share, or at a new annual rate of $1.10 per share. In addition, a 4% stock dividend was also declared, payable September 30, 1958. It is the policy of the Company to supplement regular cash dividends with a stock dividend, the amount of which is based upon the year's earnings. Stock dividends of 25% in 1951, 3% in 1956, 4% in 1957, and 4% in 1958 have been declared.

Over two years ago Purex started work on this problem. Last year we designed, developed, with the aid of glass suppliers, and patented a new handle for the Purex bleach bottle. We call it the "coffee-pot" or "pistol-grip" handle. A scooped-out hollow in the top of the bottle under the handle provides ample hand room for grasping the handle easily and firmly. It permits pouring with one hand, even with the heavy gallon size, and no matter how wet and soapy the housewife's hand may be, it can be gripped safely without slippage. It was market-tested in 1957, and consumers were enthusiastic about it.

Our entire production of household liquid bleach is now being packaged in the new "coffee-pot" handle bottle, and is in distribution in every Purex liquid bleach market in this country and in Canada. The new bottle is being introduced with the support of heavy advertising, and as consumers discover the superiority of this useful product improvement we feel sure acceptance of our Purex liquid bleach will be greatly enhanced.

Pine-Fresh Dutch Cleanser

Eight years ago the scouring cleanser field was completely realigned as to relative market position of the national brands by the introduction of a sudsing type of cleanser which speedily won major consumer acceptance. In 1957 this event was repeated by an entirely new brand of cleanser containing a chlorine bleach in dry form and introduced with extremely heavy advertising and sales promotion. Sales of every national cleanser brand were seriously affected by the sudden shift of consumer acceptance to the new brand. Since then, all leading brands of cleansers, including Dutch Cleanser, have been reformulated to include a chlorine bleach ingredient.

The new Dutch Cleanser features its pine-fresh odor in addition to the superior performance of the new formulation, using the advertising theme "Brings Outdoor Freshness Into The Kitchen."

Purex Bleach Bottle

Since the beginning of the bleach industry, the container for household bleach has been the amber glass jug in traditional form. It was an awkward package, and in the half-gallon and gallon sizes it was heavy and badly balanced. When the housewife's hands were wet and sudsy from the laundry tub, the bleach bottle became even more difficult to handle. Housewives complained, but except for making the handle larger, no bleach manufacturer had been able to do anything about it.

Plant Locations

Fifteen manufacturing plants span the United States and Canada, with packaging facilities in Mexico, Cuba, the Philippines and Australia.

Bleach and Detergent Plants:

SOUTH GATE, CALIFORNIA
(HOME OFFICE)
ST. LOUIS, MISSOURI

Liquid Bleach Plants:

ATLANTA, GEORGIA
BRISTOL, PENNSYLVANIA
DALLAS, TEXAS
MEMPHIS, TENNESSEE
NEW ORLEANS, LOUISIANA
SAN LEANDRO, CALIFORNIA
TACOMA, WASHINGTON
WESTON, ONTARIO, CANADA

Cleanser Manufacturing Plants:

BRISTOL, PENNSYLVANIA
EAST CHICAGO, INDIANA
SOUTH GATE, CALIFORNIA
SYDNEY, AUSTRALIA
WESTON, ONTARIO, CANADA

Soap Manufacturing Plants:

BRISTOL, PENNSYLVANIA
BURLINGTON, IOWA
OMAHA, NEBRASKA
TORONTO, ONTARIO, CANADA

Toiletries Manufacturing:

CHICAGO, ILLINOIS

Cleanser Packaging Plants:

HAVANA, CUBA
MANILA, P.R.
MEXICO CITY, D.F.

Respondent's Exhibit No. 117
Nielsen Food Index Total Liquid Bleach Market (including Purex brand share) Aug. '52-July '58

396X

NIELSEN FOOD INDEX

TOTAL LIQUID BLEACH MARKET - TOTAL U.S.
CONSUMER DOLLAR BASIS - ADD 000
PUREX MARKET SHARE

	TOTAL LIQUIDS		PUREX		
	SALES	SHARE	SALES	SHARE	CHANGE IN SHARE
August 1952 - July 1953	71,571	100.0%	12,706	17.7%	
August 1953 - July 1954	75,087	100.0	12,633	16.8	-0.9
August 1954 - July 1955	82,070	100.0	13,503	16.4	-0.4
August 1955 - July 1956	89,234	100.0	14,566	16.3	-0.1
August 1956 - July 1957	95,948	100.0	15,425	16.1	-0.2
August 1957 - July 1958	105,093	100.0	16,688	15.9	-0.2

Respondent's Exhibit No. 129A&B
Memorandum Trimpe to Brown dated June 20, 1958 Concerning "Atlanta-Quart Volume vs. Total Volume January, 1957-May, 1958

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 EXHIBIT NO. R-129-A
IN THE MATTER OF Shorter & Gamble
DATE 2/12/59 WITNESS
ACE REPORTING CO., Official Reporters
By Ale

Mr. Fred A. Brown

June 20, 1958

B. F. Trimpe

Atlanta - Quart Volume vs Total Volume - January, 1957-May, 1958

Attached is an Exhibit which shows Raley Brothers, Inc., Atlanta, Quart Volume and Total Volume during period January, 1957 through May, 1958, and the quart share of total volume by months, quarters and six-month periods, as well as for the calendar year 1957.

You will note the quart share of volume was down a -3.2% the last half of 1957 (46.9%) vs the first half of 1957 (50.1%).

You will also note that in January, 1958 (quart with handle was introduced in this market on January 15, 1958, at a 10¢ per case premium price) the quart share was 55.2%, which was higher than during any other month shown. This was undoubtedly due to a certain amount of "loading" by the trade of the quart without handle at the 10¢ per case lower price.

The high January, 1958, share for quarts (55.2%) is reflected in the 1958 first-quarter share (50.0%) and in the first-five-months share (48.3%). However, the monthly quart share during period February through May, 1958 (ranging from 46.0% to 46.8%) is comparable to the quart share for the last half of 1957 (46.9%).

However, in comparing February-May, 1958 with February-May, 1957, you will note the following:

	Quart Share of Total Volume		
	1957	1958	Decrease
February	49.6%	46.8%	- 2.8%
March	47.4%	46.0%	- 1.4%
April	49.8%	46.0%	- 3.8%
May	52.6%	46.3%	- 6.3%

A major consideration for discontinuing the quart with handle at a 10¢ per case premium price in the Atlanta territory is, of course, that we are facing a very grave distribution problem in this area. Certain buyers have threatened to "make an issue" of the lower price on quarts in adjacent territories, and some have indicated they would discontinue purchasing CLOROX from Raley until the "dual price arrangement" on quarts is discontinued.

397X

BFT:HBM

R-129-B

BAILEY BROTHERS, INC., ATLANTA, GEORGIA
CLOROX SALES

Period	Number of Cases: Quarts	Number of Cases: Total	% Quart Volume was of Total Volume: Month	Quarter	6 Mos.	Year
1957						
January	18,549	36,897	50.3			
February	14,592	29,477	49.6			
March	14,491	30,543	47.4			
Jan.-Mar.	47,632	96,917		49.1		
April	13,702	27,539	49.8			
May	31,548	59,996	52.6			
June	8,718	18,199	47.9			
Apr.-June	53,968	105,734		51.0		
Jan.-June	101,600	202,651			50.1	
July	17,441	37,712	46.2			
August	20,025	41,996	47.7			
September	18,502	37,346	49.5			
July-Sept.	55,968	117,054		47.8		
October	14,906	31,080	48.0			
November	15,135	39,803	38.0			
December	11,339	20,488	55.3			
Oct.-Dec.	41,380	90,377		45.8		
July-Dec.	97,348	207,431			46.9	
Jan.-Dec.	198,948	410,082				48.5
1958						
January	19,753	35,764	55.2			
February	11,498	24,572	46.8			
March	11,951	25,982	46.0			
Jan.-Mar.	43,202	86,318		50.0		
April	14,860	32,332	46.0			
May	15,436	33,363	46.3			
Apr.-May	30,296	65,695		2 Mos. 46.1		
Jan.-May	73,498	152,013			5 Mos. 48.3	

PRICE INCREASES PER CASE: 5/20/57 - 6¢ on Pts., Qts. and ½-Gals.; 8¢ on Gals.
11/18/57 - 10¢ on ½-Gals.; 8¢ on Gals.
1/15/58 - 10¢ on Qts.

398X

RX 134 A

Respondent's Exhibit No. 134A&B
Nielsen Food Index—Liquid Household Bleaches—
Clorox Share of Market, 1953-1961. (32 oz.
Equivalent Unit Basis)

TOTAL UNITED STATES

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis

FEDERAL TRADE COMMISSION
DOCKET NO. 6941. EXHIBIT NO. 134-A
IN THE MATTER OF Procter & Gamble
DATE 12-12-61 WITNESS Nicholson
ACE REPORTING CO., Official Reporters
By C Barbera

Year Ended	Share	Point Change
August 1, 1953	41.4	—
August 1, 1954	43.0	+ 1.6
August 1, 1955	44.0	+ 1.0
August 1, 1956	44.8	+ 0.8
August 1, 1957	45.3	+ 0.5
	Total Change	+ 3.9
	Average Annual Change	+ 0.975
August 1, 1958	45.8	+ 0.5
August 1, 1959	46.8	+ 1.0
August 1, 1960	48.8	+ 2.0
August 1, 1961	48.6	- 0.2
	Total Change	+ 3.3
	Average Annual Change	+ 0.825

Rx 134B

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 RESPONDENT EXHIBIT NO. 134-B

TOTAL UNITED STATES

NIELSEN - Liquid Household Bleaches - Consumer Sales Shares

Clorox Share of Market

32 oz. Equivalent Unit Basis

1952-53	A-S	41.2)	
	O-N	41.0)	
	D-J	41.2)	
	F-M	41.6)	41.4
	A-M	41.1)	
	J-J	42.5)	
1953-54	A-S	43.0)	
	O-N	42.4)	
	D-J	43.2)	43.0
	F-M	43.4)	
	A-M	43.0)	
	J-J	43.1)	
1954-55	A-S	43.4)	
	O-N	44.0)	
	D-J	44.1)	44.0
	F-M	44.3)	
	A-M	43.9)	
	J-J	44.4)	
1955-56	A-S	44.5)	
	O-N	44.7)	
	D-J	45.3)	44.8
	F-M	45.3)	
	A-M	44.8)	
	J-J	44.1)	
1956-57	A-S	44.9)	
	O-N	45.3)	
	D-J	45.4)	45.3
	F-M	45.7)	
	A-M	44.9)	
	J-J	45.7)	
1957-58	A-S	45.5)	
	O-N	45.2)	
	D-J	45.5)	45.8
	F-M	45.7)	
	A-M	45.7)	
	J-J	46.9)	
1958-59	A-S	46.5)	
	O-N	45.8)	
	D-J	47.0)	46.8
	F-M	47.0)	
	A-M	47.1)	
	J-J	47.2)	
1959-60	A-S	47.9)	
	O-N	48.9)	
	D-J	48.6)	48.8
	F-M	48.6)	
	A-M	48.8)	
	J-J	49.7)	
1960-61	A-S	49.2)	
	O-N	48.9)	
	D-J	49.1)	48.6
	F-M	48.4)	
	A-M	48.0)	
	J-J	48.0)	

400X

RX 135A

Respondent's Exhibit No. 135A&B
Nielsen Food Index—Liquid Household Bleaches
—Clorox Share of Market, 1953-1961.
(Consumer Dollar Basis)

FEDERAL TRADE COMMISSION
DOCKET NO. 6961 RESPONDENT EXHIBIT NO. 135-A
IN THE MATTER OF Procter & Gamble
DATE 12-12-61 WITNESS Nicholsen
ACE REPORTING CO., Official Reporter
By [illegible]

TOTAL UNITED STATES

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

Dollar Basis at Cost Price to Consumer

Years Ended	Share	Point Change
August 1, 1953	45.3	—
August 1, 1954	46.4	+ 1.1
August 1, 1955	47.1	+ 0.7
August 1, 1956	47.5	+ 0.7
August 1, 1957	48.4	+ 0.6
	Total Change	+ 3.1
	Average Annual Change	+ 0.775
August 1, 1958	48.7	+ 0.3
August 1, 1959	50.1	+ 1.4
August 1, 1960	51.8	+ 1.7
August 1, 1961	51.9	+ 0.1
	Total Change	+ 3.5
	Average Annual Change	+ 0.875

RX 135B

FEDERAL TRADE COMMISSION

DOCKET NO. 6901 DEPOSITION NO. 135-B

TOTAL UNITED STATES

NIELSEN - Liquid Household Bleaches - Consumer Sales Shares

Clorox Share of Market

Dollar Basis at Cost Price to Consumer

1952-53	A-S	45.0)	
	O-N	44.8)	
	D-J	45.1)	45.3
	F-M	45.6)	
	A-M	44.9)	
	J-J	46.2)	
1953-54	A-S	46.5)	
	O-N	46.0)	
	D-J	46.5)	46.4
	F-M	46.8)	
	A-M	46.4)	
	J-J	46.3)	
1954-55	A-S	46.5)	
	O-N	47.1)	
	D-J	47.2)	47.1
	F-M	47.4)	
	A-M	46.9)	
	J-J	47.5)	
1955-56	A-S	47.3)	
	O-N	47.6)	
	D-J	48.4)	47.8
	F-M	48.0)	
	A-M	48.0)	
	J-J	47.3)	
1956-57	A-S	48.0)	
	O-N	48.6)	
	D-J	48.4)	48.4
	F-M	48.8)	
	A-M	48.0)	
	J-J	49.8)	
1957-58	A-S	48.4)	
	O-N	48.2)	
	D-J	48.6)	48.7
	F-M	48.6)	
	A-M	48.8)	
	J-J	49.6)	
1958-59	A-S	49.6)	
	O-N	49.3)	
	D-J	50.3)	50.1
	F-M	50.3)	
	A-M	50.5)	
	J-J	50.4)	
1959-60	A-S	50.9)	
	O-N	51.9)	
	D-J	51.7)	51.8
	F-M	51.7)	
	A-M	52.0)	
	J-J	52.5)	
1960-61	A-S	52.4)	
	O-N	52.0)	
	D-J	52.3)	51.9
	F-M	51.7)	
	A-M	51.6)	
	J-J	51.5)	

Respondent's Exhibit No. 136A-R
Nielsen Food Index—Liquid Household Bleaches—
By Nine Nielsen Territories—Clorox Share of
Market, 1953-1961 (32 Oz. Equivalent
Unit Basis)

Rx 136 A

PACIFIC TERRITORY

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis

FEDERAL TRADE COMMISSION
DOCKET NO. 6701 EXHIBIT NO. 136-A
IN THE MATTER OF Procter & Gamble
DATE 12-12-61 WITNESS Nicholas
ACE REPORTING CO., Official Reporter
By D Barnes

Year Ended	Share	Point Change
August 1, 1953	36.2	—
August 1, 1954	37.0	+ 0.8
August 1, 1955	37.4	+ 0.4
August 1, 1956	36.3	- 1.1
August 1, 1957	36.7	+ 0.4
	Total Change	+ 0.5
	Average Annual Change	+ 0.125
August 1, 1958	36.9	+ 0.2
August 1, 1959	37.2	+ 0.3
August 1, 1960	37.2	0.0
August 1, 1961	35.6	- 1.6
	Total Change	- 1.1
	Average Annual Change	- 0.275

Rx 136 B

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 RESPONDENT EXHIBIT NO. 136-B

Pacific Territory

DIVISION - Liquid Household Bleaches - Consumer Sales Shares

Clorox Share of Market

32 oz. Equivalent Unit Basis

1952-53	A-S	35.3)	
	O-N	35.2)	
	D-J	36.5)	36.2
	F-M	37.2)	
	A-M	36.2)	
	J-J	36.8)	
1953-54	A-S	37.3)	
	O-N	37.0)	
	D-J	36.4)	37.0
	F-M	37.6)	
	A-M	36.7)	
	J-J	37.2)	
1954-55	A-S	36.9)	
	O-N	36.3)	
	D-J	37.6)	37.4
	F-M	38.0)	
	A-M	36.5)	
	J-J	37.8)	
1955-56	A-S	36.9)	
	O-N	36.9)	
	D-J	36.6)	36.3
	F-M	36.5)	
	A-M	36.0)	
	J-J	34.8)	
1956-57	A-S	37.7)	
	O-N	36.6)	
	D-J	35.8)	36.7
	F-M	35.5)	
	A-M	36.7)	
	J-J	37.7)	
1957-58	A-S	37.7)	
	O-N	35.9)	
	D-J	35.9)	36.9
	F-M	36.9)	
	A-M	36.6)	
	J-J	38.2)	
1958-59	A-S	37.5)	
	O-N	36.5)	
	D-J	37.8)	37.2
	F-M	36.3)	
	A-M	37.1)	
	J-J	37.7)	
1959-60	A-S	38.8)	
	O-N	38.7)	
	D-J	37.2)	37.2
	F-M	36.1)	
	A-M	35.8)	
	J-J	36.4)	
1960-61	A-S	36.7)	
	O-N	35.7)	
	D-J	35.3)	35.6
	F-M	34.7)	
	A-M	36.2)	
	J-J	35.0)	

Rx 136C

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 COMMISSION EXHIBIT NO.
136-C

SOUTHWEST TERRITORY

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis

Year Ended	Share	Point Change
August 1, 1953	46.3	—
August 1, 1954	47.1	+ 0.8
August 1, 1955	47.2	+ 0.1
August 1, 1956	47.3	+ 0.1
August 1, 1957	47.6	+ 0.3
	Total Change	+ 1.3
	Average Annual Change	+ 0.325
August 1, 1958	46.2	- 1.4
August 1, 1959	48.4	+ 2.2
August 1, 1960	48.5	+ 0.1
August 1, 1961	46.3	- 2.2
	Total Change	- 1.3
	Average Annual Change	- 0.325

Rx 136 D

Southwest Territory

[redacted] - Liquid Household Bleacher - Consumer Sales Shares

Clorox Share of Market

32 oz. Equivalent Unit Basis

FEDERAL TRADE COMMISSION
DOCKET NO. 6981 RESPONDENT EXHIBIT NO. 136-D

1952-53	A-S	45.4)	
	O-N	45.8)	
	D-J	46.9)	46.3
	F-M	46.5)	
	A-M	46.5)	
	J-J	46.9)	
1953-54	A-S	46.5)	
	O-N	46.6)	
	D-J	48.3)	47.1
	F-M	47.2)	
	A-M	47.1)	
	J-J	47.1)	
1954-55	A-S	46.4)	
	O-N	48.0)	
	D-J	47.3)	47.2
	F-M	47.9)	
	A-M	46.9)	
	J-J	46.2)	
1955-56	A-S	45.9)	
	O-N	48.2)	
	D-J	48.5)	47.3
	F-M	47.7)	
	A-M	47.3)	
	J-J	46.5)	
1956-57	A-S	47.7)	
	O-N	47.6)	
	D-J	48.0)	47.6
	F-M	46.4)	
	A-M	47.7)	
	J-J	47.9)	
1957-58	A-S	47.1)	
	O-N	47.1)	
	D-J	46.7)	46.2
	F-M	44.0)	
	A-M	45.0)	
	J-J	47.4)	
1958-59	A-S	48.7)	
	O-N	48.0)	
	D-J	48.3)	48.4
	F-M	48.6)	
	A-M	48.1)	
	J-J	48.5)	
1959-60	A-S	48.6)	
	O-N	48.1)	
	D-J	48.0)	48.5
	F-M	47.0)	
	A-M	49.2)	
	J-J	45.8)	
1960-61	A-S	47.8)	
	O-N	47.3)	
	D-J	47.4)	46.3
	F-M	45.4)	
	A-M	44.7)	
	J-J	45.3)	

Rx 136 E

FEDERAL TRADE COMMISSION
DOCKET NO. 6901 EXHIBIT NO. 136-E

WEST CENTRAL TERRITORY

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis

Year Ended	Share	Point Change
August 1, 1953	26.6	—
August 1, 1954	26.7	+ 0.1
August 1, 1955	27.1	+ 0.4
August 1, 1956	29.0	+ 1.9
August 1, 1957	31.6	+ 2.6
	Total Change	+ 5.0
	Average Annual Change	+ 1.250
August 1, 1958	31.7	+ 0.1
August 1, 1959	32.3	+ 0.6
August 1, 1960	34.7	+ 2.4
August 1, 1961	35.8	+ 1.1
	Total Change	+ 4.2
	Average Annual Change	+ 1.050

407X

RX 136 F

DOCKET NO. 6901 RESPONDENT EXHIBIT NO. 136-F

West Central Territory

[illegible] - Liquid Household Bleaches - Consumer Sales Shares

Clorox Share of Market

32 oz. Equivalent Unit Basis

1952-53	A-S	28.0)	
	C-N	26.1)	
	D-J	25.1)	26.6
	F-M	26.8)	
	A-M	25.2)	
	J-J	28.5)	
1953-54	A-S	27.1)	
	C-N	25.7)	
	D-J	26.2)	26.74
	F-M	27.4)	
	A-M	26.3)	
	J-J	27.2)	
1954-55	A-S	26.2)	
	C-N	25.6)	
	D-J	26.7)	27.1
	F-M	27.6)	
	A-M	27.7)	
	J-J	28.6)	
1955-56	A-S	28.5)	
	C-N	27.7)	
	D-J	29.3)	29.0
	F-M	28.9)	
	A-M	30.4)	
	J-J	29.1)	
1956-57	A-S	29.9)	
	C-N	31.4)	
	D-J	31.8)	31.6
	F-M	33.3)	
	A-M	30.6)	
	J-J	32.4)	
1957-58	A-S	31.4)	
	C-N	31.3)	
	D-J	32.2)	31.7
	F-M	30.9)	
	A-M	31.2)	
	J-J	33.4)	
1958-59	A-S	33.2)	
	C-N	31.9)	
	D-J	32.1)	32.3
	F-M	32.0)	
	A-M	32.5)	
	J-J	32.2)	
1959-60	A-S	33.8)	
	C-N	33.2)	
	D-J	34.7)	34.7
	F-M	36.2)	
	A-M	34.9)	
	J-J	35.5)	
1960-61	A-S	35.1)	
	C-N	34.4)	
	D-J	36.7)	35.9
	F-M	34.0)	
	A-M	36.0)	
	J-J	38.3)	

Rx 136 G

FILED ... COMMISSION
DOCKET NO. 6901 COMMISSION RESPONDENT EXHIBIT NO. 136-G

SOUTHEAST TERRITORY

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis

Year Ended	Share	Point Change
August 1, 1953	56.1	—
August 1, 1954	55.6	- 0.5
August 1, 1955	53.9	- 1.7
August 1, 1956	52.9	- 1.0
August 1, 1957	50.9	- 2.0
	Total Change	- 5.2
	Average Annual Change	- 1.300
August 1, 1958	51.5	+ 0.6
August 1, 1959	50.2	- 1.3
August 1, 1960	51.6	+ 1.4
August 1, 1961	51.7	+ 0.1
	Total Change	+ 0.8
	Average Annual Change	+ 0.200

409X

RX136 H

Southeast Territory

DOCKET NO. 6901 RESPONDENT EXHIBIT NO. 136-H

NIELSEN - Liquid Household Bleaches - Consumer Sales Shares

Clorox Share of Market

32 oz. Equivalent Unit Basis

1952-53	A-S	56.1)	
	O-N	57.4)	
	D-J	57.3)	56.1
	F-M	55.8)	
	A-M	54.4)	
	J-J	55.3)	
1953-54	A-S	56.6)	
	O-N	56.3)	
	D-J	56.9)	55.6
	F-M	55.9)	
	A-M	54.4)	
	J-J	53.3)	
1954-55	A-S	53.8)	
	O-N	55.0)	
	D-J	55.0)	53.9
	F-M	54.5)	
	A-M	52.8)	
	J-J	52.0)	
1955-56	A-S	52.5)	
	O-N	53.2)	
	D-J	55.0)	52.9
	F-M	53.6)	
	A-M	51.0)	
	J-J	52.2)	
1956-57	A-S	52.6)	
	O-N	52.8)	
	D-J	51.2)	50.9
	F-M	51.3)	
	A-M	48.0)	
	J-J	49.7)	
1957-58	A-S	51.9)	
	O-N	51.5)	
	D-J	51.3)	51.5
	F-M	51.9)	
	A-M	50.7)	
	J-J	51.4)	
1958-59	A-S	51.0)	
	O-N	49.5)	
	D-J	50.1)	50.2
	F-M	49.9)	
	A-M	50.1)	
	J-J	50.4)	
1959-60	A-S	49.5)	
	O-N	51.0)	
	D-J	52.3)	51.6
	F-M	52.8)	
	A-M	51.7)	
	J-J	52.3)	
1960-61	A-S	52.4)	
	O-N	52.3)	
	D-J	52.0)	51.7
	F-M	52.0)	
	A-M	51.1)	
	J-J	50.5)	

Rx 136 I

METRO CHICAGO TERRITORY

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis

FEDERAL TRADE COMMISSION
DOCKET NO. 8904 RESPONDENT EXHIBIT NO. 136-A

Year Ended	Share	Point Change
August 1, 1953	23.1	—
August 1, 1954	22.8	- 0.3
August 1, 1955	23.8	+ 1.0
August 1, 1956	25.5	+ 1.7
August 1, 1957	25.3	- 0.2
	Total Change	+ 2.2
	Average Annual Change	+ 0.55
August 1, 1958	26.4	+ 1.1
August 1, 1959	25.8	- 0.6
August 1, 1960	28.7	+ 2.9
August 1, 1961	27.5	- 1.2
	Total Change	+ 2.2
	Average Annual Change	+ 0.550

411X

Rx 136 J

Metro Chicago Territory

NIELSEN - Liquid Household Bleaches - Consumer Sales Shares

Clorox Share of Market

32 oz. Equivalent Unit Basis

DOCKET NO. 6901 RESPONDENT EXHIBIT NO. 136-J

1952-53	A-S	24.0)	
	O-N	23.8)	
	D-J	22.4)	23.1
	F-M	22.3)	
	A-M	23.3)	
	J-J	22.9)	
1953-54	A-S	23.7)	
	O-N	22.3)	
	D-J	22.4)	22.8
	F-M	21.9)	
	A-M	22.0)	
	J-J	23.7)	
1954-55	A-S	23.4)	
	O-N	23.7)	
	D-J	23.7)	23.8
	F-M	23.3)	
	A-M	23.8)	
	J-J	25.0)	
1955-56	A-S	24.9)	
	O-N	25.5)	
	D-J	26.5)	25.5
	F-M	25.9)	
	A-M	26.4)	
	J-J	23.9)	
1956-57	A-S	25.0)	
	O-N	24.5)	
	D-J	24.7)	25.3
	F-M	26.5)	
	A-M	26.0)	
	J-J	25.3)	
1957-58	A-S	26.1)	
	O-N	26.2)	
	D-J	28.0)	26.4
	F-M	25.7)	
	A-M	25.6)	
	J-J	26.9)	
1958-59	A-S	25.7)	
	O-N	23.7)	
	D-J	26.2)	25.8
	F-M	26.7)	
	A-M	24.5)	
	J-J	25.5)	
1959-60	A-S	25.5)	
	O-N	28.0)	
	D-J	29.6)	28.2
	F-M	28.4)	
	A-M	30.0)	
	J-J	29.1)	
1960-61	A-S	27.6)	
	O-N	25.0)	
	D-J	26.4)	27.5
	F-M	27.7)	
	A-M	28.7)	
	J-J	29.5)	

Rx136 K

EAST CENTRAL TERRITORY

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis

DOCKET NO. 6801 GOVERNMENT EXHIBIT NO. 136-K

Year Ended	Share	Point Change
August 1, 1953	32.5	—
August 1, 1954	35.0	+ 2.5
August 1, 1955	36.2	+ 1.2
August 1, 1956	37.5	+ 1.3
August 1, 1957	38.9	+ 1.4
	Total Change	+ 6.4
	Average Annual Change	+ 1.600
August 1, 1958	41.1	+ 2.2
August 1, 1959	42.8	+ 1.7
August 1, 1960	45.3	+ 2.5
August 1, 1961	44.7	- 0.6
	Total Change	+ 5.8
	Average Annual Change	+ 1.450

Rx136 L

East Central Territory

DOCKET NO. 6961 COMMISSION RESPONDENT EXHIBIT NO. 136-L

NIELSEN - Liquid Household Bleaches - Consumer Sales Shares

Clorox Share of Market

32 oz. Equivalent Unit Basis

1952-53	A-S	31.8)	
	O-N	32.3)	
	D-J	32.5)	32.5
	F-M	32.0)	
	A-M	32.0)	
	J-J	34.6)	
1953-54	A-S	34.9)	
	O-N	34.2)	
	D-J	35.2)	35.0
	F-M	35.4)	
	A-M	34.2)	
	J-J	35.9)	
1954-55	A-S	35.9)	
	O-N	35.4)	
	D-J	36.2)	36.2
	F-M	35.6)	
	A-M	36.7)	
	J-J	37.3)	
1955-56	A-S	36.9)	
	O-N	37.3)	
	D-J	37.3)	37.5
	F-M	38.0)	
	A-M	38.1)	
	J-J	37.5)	
1956-57	A-S	38.2)	
	O-N	38.5)	
	D-J	39.4)	38.9
	F-M	39.5)	
	A-M	38.3)	
	J-J	39.5)	
1957-58	A-S	39.0)	
	O-N	39.8)	
	D-J	40.3)	41.1
	F-M	41.8)	
	A-M	42.3)	
	J-J	43.2)	
1958-59	A-S	42.0)	
	O-N	41.9)	
	D-J	43.5)	42.8
	F-M	43.0)	
	A-M	43.1)	
	J-J	43.0)	
1959-60	A-S	44.9)	
	O-N	45.6)	
	D-J	44.9)	45.3
	F-M	45.6)	
	A-M	45.7)	
	J-J	45.1)	
1960-61	A-S	46.4)	
	O-N	46.1)	
	D-J	44.6)	44.7
	F-M	44.2)	
	A-M	43.5)	
	J-J	43.2)	

Rx 136 M

MIDDLE ATLANTIC TERRITORY

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis

DOCKET NO. 6161 COMMISSION RESPONDENT EXHIBIT NO. 136-M

Year Ended	Share	Point Change
August 1, 1953	57.7	—
August 1, 1954	62.0	+ 4.3
August 1, 1955	65.1	+ 3.1
August 1, 1956	66.0	+ 0.9
August 1, 1957	66.6	+ 0.6
	Total Change	+ 8.9
	Average Annual Change	+ 2.225
August 1, 1958	65.8	- 0.8
August 1, 1959	66.6	+ 0.8
August 1, 1960	69.7	+ 3.1
August 1, 1961	67.7	- 2.0
	Total Change	+ 1.1
	Average Annual Change	+ 0.275

RX 136 N

Middle Atlantic Territory DOCKET NO. 6961 COMMISSION/RESPONDENT EXHIBIT NO. 136-N

NIELSEN - Liquid Household Bleaches - Consumer Sales Shares

Clorox Share of Market

32 oz. Equivalent Unit Basis

1952-53	A-S	58.1)	
	O-N	57.4)	
	D-J	56.6)	57.7
	F-M	57.6)	
	A-M	57.9)	
	J-J	58.8)	
1953-54	A-S	60.7)	
	O-N	61.3)	
	D-J	62.7)	62.0
	F-M	62.3)	
	A-M	63.2)	
	J-J	62.0)	
1954-55	A-S	63.6)	
	O-N	65.3)	
	D-J	65.7)	65.1
	F-M	64.9)	
	A-M	65.3)	
	J-J	65.8)	
1955-56	A-S	65.8)	
	O-N	65.0)	
	D-J	65.7)	66.0
	F-M	66.1)	
	A-M	66.8)	
	J-J	66.6)	
1956-57	A-S	65.9)	
	O-N	66.3)	
	D-J	66.7)	66.6
	F-M	66.8)	
	A-M	66.6)	
	J-J	67.0)	
1957-58	A-S	66.1)	
	O-N	64.9)	
	D-J	66.3)	65.8
	F-M	66.6)	
	A-M	66.1)	
	J-J	65.1)	
1958-59	A-S	63.6)	
	O-N	65.0)	
	D-J	65.9)	66.6
	F-M	68.2)	
	A-M	68.2)	
	J-J	68.7)	
1959-60	A-S	68.8)	
	O-N	69.4)	
	D-J	69.4)	69.7
	F-M	68.7)	
	A-M	70.4)	
	J-J	71.5)	
1960-61	A-S	68.6)	
	O-N	67.8)	
	D-J	67.4)	67.7
	F-M	70.2)	
	A-M	64.7)	
	J-J	67.6)	

Rx 136.01

METRO NEW YORK TERRITORY DOCKET NO. 6901 RESPONDENT EXHIBIT NO. 136-0

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis

Year Ended	Share	Point Change
August 1, 1953	58.3	—
August 1, 1954	58.4	+ 0.1
August 1, 1955	61.6	+ 3.2
August 1, 1956	61.6	0.0
August 1, 1957	61.0	- 0.6
	Total Change	+ 2.7
	Average Annual Change	+ 0.675
August 1, 1958	61.5	+ 0.5
August 1, 1959	61.9	+ 0.4
August 1, 1960	61.9	0.0
August 1, 1961	63.0	+ 1.1
	Total Change	+ 2.0
	Average Annual Change	+ 0.500

RX136 P

Metro New York

CLOROX - Liquid Household Bleaches - Consumer Sales Shares

Clorox Share of Market

32 oz. Equivalent Unit Basis

DOCKET NO. 6701 EXHIBIT NO. 136-P

1952-53	A-S	58.4)	
	O-N	59.3)	
	D-J	57.3)	58.3
	F-M	58.3)	
	A-M	59.1)	
	J-J	57.6)	
1953-54	A-S	58.9)	
	O-N	56.5)	
	D-J	58.3)	58.4
	F-M	58.3)	
	A-M	58.7)	
	J-J	59.6)	
1954-55	A-S	60.8)	
	O-N	61.4)	
	D-J	59.9)	61.6
	F-M	61.8)	
	A-M	62.6)	
	J-J	63.2)	
1955-56	A-S	62.2)	
	O-N	62.0)	
	D-J	63.0)	61.6
	F-M	62.6)	
	A-M	60.9)	
	J-J	59.1)	
1956-57	A-S	58.6)	
	O-N	61.2)	
	D-J	60.4)	61.0
	F-M	62.9)	
	A-M	63.0)	
	J-J	59.6)	
1957-58	A-S	60.5)	
	O-N	60.6)	
	D-J	60.3)	61.5
	F-M	62.7)	
	A-M	62.1)	
	J-J	62.8)	
1958-59	A-S	61.6)	
	O-N	61.3)	
	D-J	63.0)	61.9
	F-M	61.4)	
	A-M	61.3)	
	J-J	62.5)	
1959-60	A-S	62.1)	
	O-N	63.2)	
	D-J	59.7)	61.9
	F-M	60.4)	
	A-M	61.5)	
	J-J	64.5)	
1960-61	A-S	64.1)	
	O-N	63.1)	
	D-J	64.9)	63.0
	F-M	62.4)	
	A-M	62.9)	
	J-J	60.7)	

Rx 136 Q

NEW ENGLAND TERRITORY

FEDERAL ... COMMISSION

DOCKET NO. 6976 COMMISSION EXHIBIT NO. 136-G

Nielsen - Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis

Year Ended	Share	Point Change
August 1, 1953	33.7	—
August 1, 1954	37.1	+ 3.4
August 1, 1955	38.8	+ 1.7
August 1, 1956	42.6	+ 3.8
August 1, 1957	45.3	+ 2.7
	Total Change	+11.6
	Average Annual Change	+ 2.900
August 1, 1958	47.4	+ 2.1
August 1, 1959	54.3	+ 6.9
August 1, 1960	56.8	+ 2.5
August 1, 1961	60.8	+ 4.0
	Total Change	+15.5
	Average Annual Change	+ 3.875

Rx 136 R

FTC
DOCKET NO. 6901 COMMISSION RESPONDENT EXHIBIT NO. 136-R

New England Territory

NIELSEN - Liquid Household Bleaches - Consumer Sales Shares

Clorox Share of Market

32 oz. Equivalent Unit Basis

1952-53	A-S	32.6)		1957-58	A-S	46.5)	
	O-N	30.9)			O-N	47.4)	
	D-J	32.5)	33.7		D-J	46.4)	47.4
	F-M	34.9)			F-M	46.5)	
	A-M	34.6)			A-M	48.0)	
	J-J	36.9)			J-J	49.7)	
1953-54	A-S	35.7)		1958-59	A-S	51.9)	
	O-N	37.3)			O-N	51.6)	
	D-J	36.5)	37.1		D-J	54.4)	54.3
	F-M	36.4)			F-M	56.0)	
	A-M	38.4)			A-M	56.5)	
	J-J	38.3)			J-J	55.4)	
1954-55	A-S	38.6)		1959-60	A-S	55.1)	
	O-N	39.7)			O-N	55.9)	
	D-J	38.7)	38.8		D-J	56.8)	56.8
	F-M	37.6)			F-M	57.6)	
	A-M	39.1)			A-M	57.1)	
	J-J	38.9)			J-J	58.0)	
1955-56	A-S	42.7)		1960-61	A-S	59.8)	
	O-N	42.5)			O-N	61.1)	
	D-J	42.3)	42.6		D-J	63.5)	60.8
	F-M	44.0)			F-M	59.9)	
	A-M	41.0)			A-M	59.6)	
	J-J	42.9)			J-J	60.6)	
1956-57	A-S	42.7)					
	O-N	45.1)					
	D-J	45.0)	45.3				
	F-M	45.0)					
	A-M	45.9)					
	J-J	47.7)					

Respondent's Exhibit No. 137
Nielsen Food Index—Sales of All Liquid Household Bleaches—Other Than Clorox

TOTAL UNITED STATES

Nielsen - Liquid Household Bleaches

SALES OF ALL LIQUID HOUSEHOLD BLEACHES-OTHER THAN CLOROX

Prior to Acquisition

Year Ended	32 ounce Equivalent Units	Consumer Dollars
August 1, 1953	270,011,000	$39,178,000
August 1, 1954	273,046,000	40,230,000
August 1, 1955	290,092,000	43,443,000
August 1, 1956	308,797,000	46,638,000
August 1, 1957	319,734,000	49,478,000

Subsequent to Acquisition

Year Ended		
August 1, 1958	329,656,000	$53,910,000
August 1, 1959	345,726,000	56,287,000
August 1, 1960	346,038,000	56,197,000
August 1, 1961	365,354,000	59,254,000

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No.

FEDERAL TRADE COMMISSION, PETITIONER

v.

THE PROCTER & GAMBLE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the Federal Trade Commission, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this case on March 18, 1966.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 19-40) is reported at 358 F. 2d 74. The decision and final order of the Commission (App. C, *infra*, pp. 43-127; J.A. 388a-465a) are reported at CCH Trade Reg. Rep. (FTC Transfer Binder 1963-1965), ¶ 16,673, but are not yet officially reported. An earlier

interlocutory decision of the Commission in this case (J.A. 249a-255a [1]) is reported at 58 F.T.C. 1203.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, pp. 41-42) was entered on March 18, 1966. On June 14, 1966, Mr. Justice Stewart entered an order extending the time for filing a petition for a writ of certiorari to and including July 15, 1966. We invoke the jurisdiction of this Court under 28 U.S.C. 1254 (1) and Section 11(c) of the Clayton Act, as amended, 15 U.S.C. 21(c).

QUESTION PRESENTED

Whether the Federal Trade Commission correctly held that the acquisition of the dominant producer of household liquid bleach by The Procter & Gamble Company—a very large producer of a variety of closely related products—violated Section 7 of the Clayton Act.

STATUTES INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

> No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Fed-

[1] "J.A." references are to the joint appendix filed in the court below, copies of which have been lodged with this Court.

> eral Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

Section 11(a) of the Clayton Act, 38 Stat. 734, as amended, 64 Stat. 1125, 15 U.S.C. 21 (a), provides:

> Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested * * * in the Federal Trade Commission where applicable to all other character of commerce * * *.

STATEMENT

On October 7, 1957, the Federal Trade Commission issued a complaint (J.A. 15a) charging that on or about August 1, 1957, The Procter & Gamble Company had acquired the assets of Clorox Chemical Company, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. (J.A. 20a-21a.) Following evidentiary hearings, the hearing examiner, on June 17, 1960, rendered his decision (J.A. 179a), in which he concluded that the acquisition was unlawful and ordered divestiture (J.A. 242a-246a). On appeal, the Commission, on June 15, 1961, reversed (J.A. 249a-255a, 58 F.T.C. 1203), holding that the record as then constituted was inadequate, and remanding the case to the examiner for additional evidentiary hearings. These were held, and on February 28, 1962, the examiner rendered his second decision (J.A. 287 a), in which he again held the acquisition unlawful

and ordered divestiture (J.A. 367a-372a). Procter again appealed, and the Commission, in a lengthy opinion (J.A. 391a), affirmed the examiner and entered a final order of divestiture (J.A. 388a-391a). The Court of Appeals for the Sixth Circuit reversed and directed that the Commission's complaint be dismissed (App. A, *infra*, pp. 19-40).

The factual findings of the Commission show that at the time of the acquisition Clorox, the acquired company, was the nation's dominant producer of household liquid bleach.[2] With annual sales of slightly less than $40 million, it had 50 percent of all sales of this common household product, and its share had been growing steadily (J.A. 395a). In some areas of the country, Clorox's share was greater than 50 percent; for example, it had 72 percent of all household liquid bleach sales in the middle Atlantic States (J.A. 397a).

The liquid bleach industry was highly concentrated. Clorox and its three major competitors accounted among themselves for almost 75 percent of the industry's total sales (J.A. 396a); only Clorox, however, sold throughout the nation (J.A. 397a). Most of the remaining manufacturers of liquid bleach were very small (J.A. 396a).

All household liquid bleaches are chemically identical,[3] and Clorox bleach is not intrinsically superior to

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[2] The parties are agreed that household liquid bleach is the relevant line of commerce in this case (App. A, *infra*, p. 26).

[3] Household liquid bleach is a 5¼-percent sodium hypochlorite solution (J.A. 395a, 398a).

competing liquid bleaches (J.A. 398a, 728a). Nor is it cheaper; it is, on the contrary, a "premium" bleach (J.A. 398a). Its market preeminence is thus apparently due to extensive and prolonged advertising in the mass-media (J.A. 398a-399a). Clorox spent an amount equal to 10 percent of its sales on advertising (J.A. 399a).

Procter, the acquiring company, is a very large diversified producer of consumer products. Its total sales in 1957 exceeded $1 billion (J.A. 400a), and its sales of soaps, detergents and cleansers alone—products closely related in use and marketing methods to household liquid bleach (J.A. 406a)—were more than $500 million (J.A. 400a-401a). It was, moreover, the leading seller of household cleansing agents, accounting, for example, for 54.5 percent of the nation's $760 million packaged-detergents industry and, with two other large firms—Colgate-Palmolive and Lever Brothers—for 80 percent (J.A. 401a). In addition, Procter was the nation's largest advertiser, spending in 1957 more than $125 million for advertising and consumer promotions; its advertising expenditures alone were twice as large as Clorox's total sales that year (J.A. 401a, 395a).

The Commission found that the acquisition of Clorox by Procter would be substantially harmful to competition in the liquid bleach industry because the substitution of Procter for Clorox as the dominant bleach producer would discourage new competitors from entering the field and existing sellers of liquid bleach from attempting to compete vigorously with

Clorox (J.A. 440a-441a). Although advertising was apparently an important factor in the rise of Clorox to its position of dominance, prior to its acquisition by Procter, Clorox was a relatively small, single-product firm, incapable of truly massive advertising and consumer promotions, and ineligible for the substantial discounts that the mass media make available to very large national advertisers like Procter (J.A. 434a-435a). As the result of the acquisition, the Commission found, Clorox for the first time was able to enjoy the considerable marketing advantages that large multi-product firms like Procter possess—for example, advantages of price, programming flexibility, and sponsorship in national television advertising, and virtually limitless financial resources to support large advertising budgets and to enable costly, but highly effective, consumer promotion campaigns using coupons, premiums, and like devices (J.A. 400a, 433a-438a). The Commission concluded that Procter would have substantially greater power in the liquid bleach market than Clorox had had, and that, whether or not Procter exercised its power, the small firms in the industry and potential entrants would be deterred from challenging the dominant market position of the Procter-Clorox combine (J.A. 440a-442a).

The Commission also found that the merger would substantially impair the prospects for competition in the liquid bleach industry by eliminating Procter as a potential competitor (J.A. 454a-455a). Observing that the threat of new entry often acts as an important and salutary restraint upon anti-competitive

behavior by oligopolists, and that the liquid bleach industry was highly oligopolistic at the time of the merger, the Commission pointed out that, prior to the merger, Procter was the most likely prospective entrant. Well entrenched in closely related product lines, Procter carefully considered entering the liquid bleach industry on its own (J.A. 402a-403a). Had it not purchased Clorox, it would have remained a threat to Clorox's dominance, because it would have had the capability of entering, and the incentive to enter, the bleach industry in the event that Clorox tried to exploit its dominant position.

In reversing the Commission, the court of appeals did not disturb the Commission's factual findings. It rejected, however, the inferences of competitive harm which the Commission drew. It held the Commission's conclusion that the merger eliminated an important source of potential competition vitiated because "[t]here was no reasonable probability that Procter would have entered the household liquid bleach market but for the merger" (App. A, *infra*, p. 36), and it overturned the Commission's conclusion that the merger strengthened Clorox's dominance in the industry because it thought that this conclusion rested upon mere conjecture and upon a general hostility to bigness in business, that the Commission had failed to show that Procter would engage in anti-competitive conduct, and that the Commission had failed to give adequate weight to the fact that in 1961 (after the merger) the market share of Clorox bleach declined slightly (App. A, *infra*, pp. 32, 34, 37).

In the court of appeals, Procter also challenged the Commission's decision on procedural grounds—alleged reliance by the Commission on matter *dehors* the record, and the Commission's allegedly improper failure to adhere in its second decision to the principles of its earlier interlocutory decision. On these issues, the court upheld the Commission. (App. A, *infra*, pp. 22-23.)

REASONS FOR GRANTING THE WRIT

This case presents exceedingly important questions in the administration of the merger law. The narrow question is whether the Federal Trade Commission exceeded its authority in finding that the acquisition by a large diversified producer of heavily advertised consumer products (Procter) of a smaller producer (Clorox) which was dominant in a related product line where concentration was already great violated Section 7. More broadly, the issue is the proper legal standard for judging conglomerate mergers of this general type, involving firms in related product lines. The Commission did not suggest in its opinion—and we do not suggest here—that all such mergers are within the ban of Section 7. But some of them—and very clearly, we submit, the merger of Procter and Clorox—pose very substantial dangers to competition, and the Commission attempted in this case to formulate appropriate criteria of legality. In reversing the Commission, the court of appeals below purported merely to be appraising the evidentiary support for the Commission's findings. It is demonstrable, however, that in fact the court rejected the Commission's

standard and instead adopted a standard which, unless reversed, will prevent the Commission and the Department of Justice from vindicating the purposes of Congress in this area.

I.

As we shall urge in the second part of this discussion (*infra*, pp. 11-17), the decision below is erroneous, in conflict with the holding of another circuit, and manifestly contrary to the teachings of several recent decisions of this Court. But, in all events, there can be, we believe, no serious doubt of the importance of the issue, or of the suitability of the present case for resolving it authoritatively.

The Commission's limited resources for merger enforcement are heavily committed to conglomerate mergers involving firms in related product lines.[4] It recently found one unlawful in *General Foods Corp.*, 3 CCH Trade Reg. Rep., ¶ 17,465, relying heavily on its opinion in the instant case. An earlier decision invalidating a similar merger was affirmed in *Ekco Products Co.* v. *Federal Trade Commission*, 347 F.2d 745 (C.A. 7). See, also, *Reynolds Metals Co.* v. *Federal Trade Commission*, 309 F. 2d 223 (C.A. D.C.); cf. *Federal Trade Commission* v. *Consolidated Foods Corp.*, 380 U.S. 592. And the Commission has a number of other, similar acquisitions under active investigation with a view to issuance of formal com-

[4] The Commission in its opinion in this case suggested the definition "product extension" for a merger between "sellers of functionally closely related products * * * that may enable significant integration in the production, distribution or marketing activities of the merging firms" (J.A. 404a).

plaints. Thus the decision below casts a serious cloud over a major law enforcement program.

A few statistics will indicate the importance of this program in the overall enforcement of the merger law. This Court in its prior decisions under the amended Section 7 has dealt mainly with "horizontal" mergers—those between direct competitors.[5] Yet, between 1960 and 1964 (the latest period for which adequate figures are available), the Bureau of Economics of the Federal Trade Commission estimates that only 12 percent of all acquisitions of firms, like Clorox, having assets of more than $10 million—major acquisitions, in other words—were horizontal (down from 31 percent in 1948-1953); 52.9 percent (up from 46.6 percent in the earlier period) were conglomerate mergers between firms that, like Procter and Clorox, did not sell competing products. Hearings before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, 89th Cong., 1st Sess., pursuant to S. Res. 40, Pt. 2, p. 516. The trend of major acquisitions is plainly toward conglomerate mergers of this type.

Of course, not all—or even most—such mergers are harmful to competition. But it is plain that the government must have adequate legal tools to deal with those that are. Thus it is imperative that this Court clarify the application of Section 7 in this vital area. The present case is especially suitable

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[5] The only conglomerate case was *Federal Trade Commission* v. *Consolidated Foods Corp.*, 380 U.S. 592, where the Court upheld the Commission's determination that the challenged merger was illegal because it fostered reciprocal buying.

for this purpose. The question of the proper legal standards to govern these mergers is presented here in a particularly clear-cut form. Not only did the Commission in its landmark opinion make an exhaustive analysis of the problem and suggest appropriate standards, but the court of appeals did not disturb the Commission's factual findings, albeit it differed in its interpretation of their legal significance. The issues thus emerge well defined.

II.

The Commission's reasoning, in concluding that Procter's acquisition of Clorox violated Section 7, may be briefly summarized as follows. Clorox, with a 50 percent market share (considerably higher in some regions), was the dominant producer in the highly concentrated liquid bleach industry, but, withal, a relatively small company; neither a giant nor a diversified firm, it did not completely overshadow its competitors. In an industry so highly oligopolistic, even a slight increment in the market power of the dominant firm would be exceedingly dangerous to competition (cf. *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 365, n. 42), and the substitution of Procter for Clorox greatly enhanced the latter's power and increased significantly the barriers to entry into the liquid bleach industry, principally by strengthening Clorox vis-à-vis its competitors and potential competitors in the crucial area of advertising and marketing. (See Statement, *supra*, pp. 5-6.)

The essential grounds of the court of appeals in rejecting the Commission's reasoning and result were three. Each, we submit, is unsound. Together they compose a legal standard that would foreclose all ef-

fective enforcement action against conglomerate mergers.

1. The court deemed the Commission's analysis of the deterrent effect upon small competitors and prospective entrants of Procter's substitution for Clorox mere conjecture. As this Court has repeatedly pointed out, however, Section 7 requires a prediction of the future effects, the likely long-term impact, of a challenged merger (see, *e.g.*, *United States* v. *Von's Grocery Co.*, 384 U.S. 270), and Congress gave the difficult and exacting task of making such predictions—which inevitably involve an element of guesswork or conjecture—to the Commission, not the reviewing courts (see *Federal Trade Commission* v. *Consolidated Foods Corp.*, 380 U.S. 592, 600). We submit that there was a rational basis for the Commission to conclude that the dramatic changes in the conditions of competition in the liquid bleach industry wrought by Procter's substitution for Clorox were likely to impair competition substantially; and that the court of appeals was without power to substitute its own predictions as to the likely future course of competition in the indsutry.

2. The court below thought that the Commission should have demonstrated that Procter will in fact employ its vast marketing and financial power in Clorox's behalf. The Commission, however, carefully explained why such proof was unnecessary to show that the merger would probably have a deterrent effect upon small competitors and prospective entrants (J.A. 441a-442a):

> We need not attempt to ascertain or predict whether, and to what extent, Procter has taken

or will take active steps to obtain for Clorox the potential scale or other advantages accruing from the merger. As has been pointed out, the conditions which retard competition in an industry are to an important degree psychological. They stem from competitors' appraisal of each other's intentions, rather than from the intentions—or the actions taken upon them—themselves. The appropriate standpoint for appraising the impact of this merger is, then, that of Clorox's rivals and of the firms which might contemplate entering the liquid bleach industry. To such firms, it is probably a matter of relative indifference, in setting business policy, how actively a Procter-owned Clorox pursues its opportunities for aggressive, market-dominating conduct. The firm confined by the high costs of shipping liquid bleach, and the high costs of national or regional advertising, within a geographically small area, cannot ignore the ability of a firm of Procter's size and experience to drive it out of business (not necessarily deliberately) by a sustained local campaign of advertising, sales promotions and other efforts. * * * A small or medium-sized firm contemplating entry cannot ignore the fact that Procter is a billion-dollar corporation whose marketing experience extends far beyond the limited horizons of the liquid bleach industry and whose aggregate operations are several times greater than those of all the firms in the industry combined. Even a large firm contemplating entry into such an industry must find itself loath to challenge a brand as well-established as Clorox bleach, when that brand is backed by the powerful marketing capacities of a firm such as Procter.

3. The court below attached great weight to the post-acquisition evidence in the record. But, precisely because the anti-competitive effects of the merger do *not* depend on Procter's actually exploiting its power in the liquid bleach industry (see discussion under point 2, *supra*), it is immaterial that Procter in the few post-acquisition years covered by the record operated Clorox much as it had been operated before the acquisition. Moreover, the actual operation and effects of the Procter-Clorox combine are not fairly to be tested by reference solely to a post-acquisition period during which the government was actively challenging the merger and seeking divestiture. *United States* v. *Continental Can Co.*, 378 U.S. 441, 463. As for the evidence, so heavily stressed by the court below, that Clorox's market share declined by 0.2 percent in one of the years (1961) following the acquisition (App. A, *infra*, p. 34), it was entitled to little weight. Even a dominant firm must suffer occasional minor vicissitudes. Respondent's own figures show that Clorox's market share increased from 48.4 percent to 5.19 percent between the year of the merger (1957) and the last year for which the record contains evidence (1961) (J.A. 402X; see J.A. 462a).[6]

In sum, the Commission was warranted in finding that the substitution of Procter for Clorox greatly enhanced the latter's formidable status; and this drastic change in the competitive environment amply justified the Commission's prediction that in

[6] We emphasize that the Commission did not ignore the post-acquisition evidence. It considered it carefully and decided that it supported, rather than undermined, its analysis of probable anti-competitive effect (J.A. 462a-464a).

the long run competition is likely to suffer substantially. To require that the Commission go further and prove that Procter will in fact exploit its power is to require the impossible; to demand proof that existing competitors will be made more cautious, and that potential entrants will be deterred by Procter's presence in the place of Clorox, is to ask for a belaboring of the obvious. The effect of the decision below is to deny Section 7 its prophylactic function and render virtually meaningless Congress' expressed intent that the statute embrace conglomerate as well as horizontal and vertical mergers. See H. Rep. No. 1191, 81st Cong., 1st Sess., p. 11; *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 317; J.A. 409a.

The court of appeals also erred, we submit, in rejecting the Commission's additional point that the merger harmed competition by eliminating Procter as a potential competitor in the sale of household liquid bleach. The court thought this point vitiated by lack of proof that Procter was actually likely to enter the liquid bleach market on its own, assuming the merger route were blocked. The Commission itself declined "to speculate on * * * whether or not Procter, had its acquisition of Clorox been blocked, would in fact have entered the bleach industry on its own" (J.A. 455a). For, it pointed out, the value of potential competition as a salutary restraint upon abuses of power by monopolists and oligopolists (like Clorox) lies not only in the likelihood that the potential competitor will soon become an actual one; the threat of future entry itself is a restraint, even if the threat does not

soon materialize. This is because an oligopolist faced by such a threat will, as a matter of common business sense, avoid conduct calculated to attract the potential competitor into the market—like raising prices too far above the competitive level. It was thus quite appropriate for the Commission to conclude that Clorox's dominance was limited by the indisputable fact that Procter was ready, willing and able to produce liquid bleach itself in competition with Clorox if entry became attractive.

Such is the teaching of *United States* v. *Continental Can Co.*, 378 U.S. 441, 465-466, where the Court pointed out that the mere "possibility" of new competition "over the long run acts as a deterrent against attempts by the dominant members of either industry to reap the possible benefits of their position by raising prices above the competitive level." Cf. *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 659, where the Court noted that "the mere efforts of Pacific Northwest to get into the California market, *though unsuccessful*, had a powerful influence on El Paso's business attitudes within the State" (emphasis added). And in *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158, the court observed that, even if a firm is not likely to enter the market immediately, the fact that it appears to await only an opportune moment to do so is highly significant; a violation of Section 7 may therefore be predicated upon the elimination of "the potential competition of the corporation that might have remained at the edge of the market, continually threatening to enter." (378 U.S. at 173).

In this respect, absence of any internally manifested intent to enter the market is unimportant. What matters is not what Procter's officials in fact thought of entering the liquid bleach industry other than by acquiring Clorox, but the objective appearances—all that Clorox had to go on. To Clorox, Procter was, surely, a continuing threat to enter. Indeed, a more likely entrant on a large scale into that industry is hard to conceive.

We note finally that in *Ekco Products Co.* v. *Federal Trade Commission*, 347 F. 2d 745, the Seventh Circuit, upon facts strikingly similar to those at bar, upheld the Commission's finding that the acquiring company (Ekco) was a "'prime prospect to enter the commercial meat-handling equipment field on its own and offer McClintock [the acquired company] effective competition.'" (347 F. 2d at 752). There, as here, the acquiring company was a large diversified manufacturer of products closely related to those of the acquired firm and marketed through the same channels of distribution, and there, as here, officials of the acquiring company regarded the acquisition as a logical extension of its existing operations. We submit that the decisions of the Seventh Circuit in *Ekco* and the decision of the Sixth Circuit below cannot be reconciled, and we urge this Court to resolve the conflict.

CONCLUSION

This is a pilot case of major significance in an area of antitrust that is of rapidly growing importance. The petition for a writ of certiorari should be granted.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

DONALD F. TURNER,
Assistant Attorney General.

RICHARD A. POSNER,
Assistant to the Solicitor General.

JAMES MCI. HENDERSON,
General Counsel,

J. B. TRULY,
Assistant General Counsel,

FREDERICK H. MAYER,
GERALD HARWOOD,
Attorneys,
Federal Trade Commission.

JULY 1966.

APPENDIX A

No. 15769

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THE PROCTER & GAMBLE COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Decided March 18, 1966.

PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL TRADE COMMISSION

Before WEICK, Chief Judge, PHILLIPS, Circuit Judge, and GREEN,* District Judge.

WEICK, Chief Judge. This is a proceeding to review an order of the Federal Trade Commission requiring the Procter & Gamble Company to divest assets of Clorox Chemical Company alleged to have been acquired by it in violation of Section 7 of the Clayton Act. 15 U.S.C. § 18.

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* Honorable Ben C. Green, Judge, United States District Court for the Northern District of Ohio, sitting by designation.

The complaint filed by the Federal Trade Commission was served on October 7, 1957. It alleged that Procter is the leading producer in the United States of soap and detergent products, which it sells under brand names, and a major producer of other consumer products sold under brand names. The complaint further alleged that on August 1, 1957 Procter acquired Clorox Chemical Company which was the nation's largest producer of household liquid bleach, and that Clorox sold its product nationally under the trade name of "Clorox". The complaint further alleged that Procter's acquisition of Clorox may substantially lessen competition or tend to create a monopoly in the sale of household liquid bleaches, in violation of Section 7 of the Clayton Act.

Procter filed an answer admitting its acquisition of the assets of Clorox, but denying the alleged probable anti-competitive effects of the acquisition and denying that it violated Section 7 of the Clayton Act.

Following hearings before a hearing examiner over a period of about fourteen months, the examiner issued his initial decision on June 17, 1960, finding that the acquisition violated Section 7 of the Clayton Act and ordered divestiture.

Appeals were taken to the Commission and on June 15, 1961, in a per curiam opinion, the Commission set aside the initial decision of the examiner because the record as presently constituted did not provide an adequate basis for determining the legality of the acquisition. It recognized that under such circumstance it might dismiss the complaint, but concluded that the public interest would be better served by remanding the case for the taking of additional evidence. It stated that the remand would afford a more complete post acquisition picture and allow "the Commission an informed hindsight upon which it can

act rather than placing too strong a reliance upon treacherous conjecture."

The hearing examiner was directed to receive evidence relating to the competitive situation as it presently exists in the liquid bleach industry and was instructed that the evidence should relate to events occurring since November, 1958, and should include market share data in geographical regions, as well as information directed to more clearly delineating the production and merchandising facilities and techniques utilized by Clorox under the control of Procter.

Prior to the hearing on the remand Procter filed a complaint in the United States District Court for the District of Columbia, to enjoin the Commission from proceeding with the remand. Its motion for a temporary restraining order was denied on the Commission's representation that the remand proceeding would take no more than two days. The action was later dismissed. The remand hearing was held and completed in two days. The hearing examiner rendered his second initial decision on February 28, 1962, which, like his first initial decision, found against Procter and ordered divestiture.

On the second appeal to the Commission, it ordered reargument on all contested issues of fact and law presented by the entire record and not merely by the record on the remand. The Commission in a 74 page opinion decided against Procter, adopting substantially the hearing examiner's findings and recommendations, except that it permitted Procter to divest the acquired assets by means of a spin-off.

Procter presents two questions here, namely, (1) whether the Commission's conduct of the proceeding and its reliance on matters de hors the record violated the Clayton and Administrative Procedure Acts and denied Procter due process of law; and (2)

whether there was substantial evidence that the acquisition violated Section 7 of the Clayton Act. We will discuss these questions in the order presented.

The Commission's Conduct of the Proceeding

As has been noted, the Commission rendered two decisions in this case. In the interim between the decisions the personnel of the Commission changed, so that only one Commissioner participated in both decisions.

Procter argues that since the Commission found in its first decision that the record did not form an adequate basis for determining the legality of the acquisition, it should have dismissed the complaint instead of remanding the case to the hearing examiner for further hearings.

Although it is true that the Commission could have dismissed the complaint, in our opinion it was not required to do so. It had the power, in its discretion, to order a remand and to permit the introduction of additional evidence. The Commission's first decision was not a final decision. The case was still pending before the Commission. At best, its first decision was interlocutory in nature and was subject to reconsideration and change. *Kirk* v. *Olson*, 245 U.S. 225 (1917); *Cia Mexicana DeGas* v. *F.T.C.*, 167 F.2d 804 (5th Cir., 1964); 2 Am.Jur. 2d, Administrative Law, § 522.

Procter relies on *Texaco, Inc.* v. *F.P.C.*, 336 F.2d 754 (D.C. Cir., 1964), where the Commission was criticized on this and on another ground. The Supreme Court, however, vacated the order of the Court of Appeals directing that the complaint be dismissed and remanded the case for further proceedings. In any event, it does not appear to us that the Court of Appeals set aside the order because of the Commis-

sion's conduct alone. 381 U.S. 739 (1965). The Supreme Court's treatment of Texaco does not support Procter.

The Commission's Alleged Reliance on Matters De Hors the Record

Procter asserts that the Commission's decision was based upon economic theories drawn from extra-record writings and was therefore violative of due process. It states that the decision was premised and critically based upon 85 citations of 43 extra-record writings which purport to deal with economic, political and social concepts.

These cited writings were general in nature. None of them dealt with the facts in the present case. At no place in its opinion did the Commission regard the citations as evidence. There was no citation of any economic writings by the hearing examiner in his second initial decision, which adopted findings of fact and comprises about 88 pages of the record. The hearing examiner's first initial decision cites no such authority. The Commission apparently cited these writings to demonstrate that its decision comported with economic authority. The Supreme Court has cited and relied on economic writings in its consideration of Section 7 cases. *F.T.C.* v. *Consolidated Foods*, 380 U.S. 592 (1965); *United States* v. *Penn-Olin Chem. Co.*, 378 U.S. 158 (1964); *United States* v. *Philadelphia Nat'l Bank*, 374 U.S. 321 (1963); *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962). See also *Ekco Products Co.* v. *F.T.C.*, 347 F.2d 745 (7th Cir., 1965); *Crown Zellerbach Corp.* v. *F.T.C.*, 296 F.2d 800 (9th Cir., 1961).

We find no error in this respect.

Was There Substantial Evidence That the Acquisition of Clorox by Proctor Was Reasonably Likely to Result in A Substantial Lessening of Competition in Violation of Section 7 of the Clayton Act?

It is difficult for us to harmonize the two decisions of the Commission in this case.

The decision of the first Commission set aside the first initial decision of the hearing examiner because the record as then constituted did not provide an adequate basis for determination of the legality of the acquisition. This is another way of saying that the evidence was insufficient to support a finding of illegality. The remand was for the sole purpose of taking post-acquisition evidence from which the Commission could rely on "informed hindsight" rather than "upon treacherous conjecture." The only evidence taken on the remand related to post-acquisition conditions.

The second Commission, contrary to the ruling of the first Commission, was of the view that the post-acquisition evidence was of little value and was admissible only in an unusual case (not the present case). It did discuss a portion of the post-acquisition evidence and stated that if it was considered it might furnish support for the findings which it made on the basis of other factors. It also mentioned that none of the phenomena (post-acquisition evidence) proved that the merger was unlawful. It stated that there had been no "dramatic" change in market structure or behavior in the years since the merger and that there was no basis for according the post-acquisition evidence particular weight since it "found its way, needlessly, into the record." The post-acquisition evidence will be discussed more in detail later.

The second Commission's decision was based entirely on the record submitted to the first Commission,

which that body had ruled to be insufficient to support a finding of illegality.

We must determine whether the findings contained in the opinion of the second Commission which conflict with those of the first Commission, are supported by substantial evidence.

Procter is an Ohio corporation. At the time of the acquisition it was the nation's largest domestic manufacturer of soaps, detergents, and cleansers. It also manufactured and sold some food products, paper products, shampoos, dentifrices, and home permanents. It had assets in excess of one-half billion dollars, and annual sales of $1.15 billion. It was an old, well managed and highly successful company, having some 56,000 shareholders.

Clorox Chemical Co. on the other hand was a relatively small company as compared with Procter. It was organized in 1928, and manufactured, distributed and sold a single product, "Clorox," a household liquid bleach which was used as a whitener as well as a disinfectant. Clorox was the largest producer of such bleach in the country.

During the period of five years prior to the merger, Clorox had a steady and continuous growth in sales, profits, and net worth. It had total assets (depreciated book value) of over $12,000,000, of which $4,000,000 was liquid, and had an earned surplus of over $7,000,000. It had annual sales of slightly less than $40,000,000, which constituted 48.8% of the national sales of liquid household bleach. It had thirteen plants located throughout the country, and was the only producer of bleach that distributed on a national scale. It employed no salesmen but marketed its product solely through brokers or distributors.

The merger negotiations were initiated by shareholders of Clorox, and after study for almost two

years by Procter, they ripened into a merger, whereby Procter exchanged 639,578 shares of its common stock, worth about $30.3 million, for the assets of Clorox, which were transferred to a Procter subsidiary.

Household liquid bleach is manufactured by a relatively simple process. Chlorine is introduced into a caustic soda solution, the resulting chemical reaction being one which forms sodium hypochlorite. The bleach consists of 5¼% hypochlorite and 94¾% water. The bleach retails for about fifteen to nineteen cents per quart. It is a low priced, high turnover item, sold mainly to housewives, in grocery stores and supermarkets. Because of the weight of both the product and its container, as reflected in the high cost of shipping, it has been found feasible to market the bleach mostly in areas not more than three hundred miles from the location of its manufacture.

Procter had never engaged in the manufacture or distribution of household liquid bleach prior to the merger and there is no evidence that it ever planned to do so on its own. It was not a competitor, supplier or customer of Clorox.

There was no dispute between the parties over the line of commerce or the section of the country. The line of commerce was household liquid bleach and the section of the country was the nation and a series of regional markets.

The following table shows the market shares prior to the merger of the six leading producers of household liquid bleach, and about two hundred small producers appearing under the title of "all other brands." The "All other brands" also include chain stores and supermarkets who sell their own private brands, and account for about 20% of the market.

"Market Shares of Household Liquid Bleach Manufacturers

(Consumer Dollar Basis)

Brand	*Percentage of Total U.S. Sales*
Clorox	48.8
Purex	15.7
Roman Cleanser	5.9
Fleecy White	4.0
Hilex	3.3
Linco	2.1
Total	79.8
All Other Brands	20.2"

The two hundred producers were mostly small concerns or individuals, some of whom were characterized as small "garage" or "down cellar" bleach producers. Only eight of such producers had assets in excess of $1,000,000 and very few had assets of more than $75,000.

The market shares of the six leading producers on a consumer dollar basis for the nine principal territories are shown on the table appearing at the end of this opinion as Appendix "A".

Although there was evidence that all producers use the same formula in the manufacture of liquid household bleach, Clorox attributed its success to its maintaining a high degree of quality control in its production process. The fact that prior to the merger its sales accounted for nearly fifty per cent of the market, would seem to indicate its product's wide acceptance and preference by housewives. The Commission, on the other hand, attributed the success of Clorox to extensive advertising. Clorox did spend about ten per cent of its sales in advertising. But even though the advertising was extensive, the product had to be

good in order for it to obtain repeat-purchases by the housewife. This is demonstrated by the fact that large chains like A&P and Safeway Stores carry Clorox on their shelves even though they market their own private brands of bleach.

The Commission was of the opinion that the household liquid bleach market was highly concentrated, with barriers making it virtually impossible to be penetrated nationally. It probably would be difficult to penetrate this market on a national scale without the expenditure of a large sum of money. There is no evidence that anyone has ever tried it. Clorox was the only producer in that field. The fact that the bleach is a low cost, high turnover item, with accompanying small profits, requiring many factories in strategic locations, would probably act as a deterrent. We would doubt that a small company like Clorox, with assets of only $12,000,000, would deter large companies like Lever Brothers and Colgate-Palmolive Peet Co., (Procter's large competitors) from entering the field on a national basis if they concluded that the profits were sufficiently attractive to justify the expenditure required. We would think that any concern desiring to enter the household liquid bleach market would probably try it on a regional basis.

The fact that in addition to the six named producers sharing eighty per cent of the market, there were two hundred smaller producers, both prior and subsequent to the merger, would not seem to indicate anything unhealthy about the market conditions. And the post-merger evidence was to the effect that the other producers subsequent to the merger were selling more bleach for more money than ever before.

It was the position of Procter that it merely supplanted Clorox in the market and that the merger

did not increase the market share of Clorox because Procter was not in that market.

The Commission points out that with Procter's huge finances, its know-how in the manufacturing and marketing of its own products, its eighteen hundred salesmen, and its ability to obtain discounts in advertising, it is in a much better position than Clorox to compete with all the bleach competitors, and that Procter could sell for lower prices (even below cost) and this would probably lessen competition.

But Clorox, and not Procter, had the know-how in the household liquid bleach business as evidenced by its success in starting from scratch and building a $12,000,000 corporation with sales of nearly $40,000,000 annually and obtaining over forty-eight per cent of the market. The finances of Clorox, although not comparable with Procter's, were entirely adequate for its purpose and enabled it to continue its growth and to maintain and increase its share in the market. There has been no significant change in Clorox's market share in the four years subsequent to the merger.

Procter has eighteen hundred salesmen. Since the merger Procter has continued with Clorox distributors and has not used its own salesmen. Assuming that it may desire at some time to change over to salesmen, it is not probable that it could do so without substantially increasing the size of its sales force, which would involve additional expense. It is of course possible that some economies could be effected if a changeover is made, but that is no reason to condemn a merger otherwise lawful.

Clorox spent about ten per cent of its sales in advertising. Procter, in its soap and cleansing products business, is one of the nation's largest advertisers, spending about $70,000,000 in the year of the merger, and an additional $47,000,000 for promotion.

The Commission points out that Procter could obtain larger discounts than Clorox in television network, newspaper and magazine advertising, and could adapt the advertising on a national or local basis as the need arises. Clorox used principally spot announcements rather than network advertising, which were effective and very adequate for its own purpose. The cost of network advertising would seem to depend on the type of talent utilized on the program. TV stations, magazines and newspapers are not required to give discounts for quantity advertising and presumably could discontinue them at any time. Doubtless Procter could advertise more extensively than Clorox, but there is such a thing as saturating the market. We find it difficult to base a finding of illegality on discounts in advertising. Here again, in our judgment the fact that a merger may result in some economies is no reason to condemn it.[1]

The Commission urges that Procter, with its complete line of household products, is in a much better position than Clorox to obtain desirable shelf space in grocery stores, for the display of all of its products, including bleach. The evidence is clear that Clorox, prior to the merger, with distributors and not a sales force of its own, obtained very adequate shelf space, even in chain stores and supermarkets which displayed their own private brands. Where a product like Clorox has great consumer demand, a grocer is very likely to display it in order to satisfy his customers. We find no merit in this claim.

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[1] We cannot assume that Procter would divert the large sums which it found necessary to expend for advertising and promotion to maintain its competitive position in the soap and cleanser field to wipe out its competitors in the household bleach market.

The Commission directed attention to Procter's success in marketing new products. In 1957 Procter introduced a new abrasive cleanser called "Comet". At the time Procter entered the field, "Ajax", manufactured by Colgate-Palmolive, sold about fifty-six per cent of the total national sales of abrasive cleansers. Other leading brands were "Bab-O", which had twenty-four per cent of the total national sales, and "Blue Dutch", which had ten per cent. Over a period of twenty-two months Procter spent $7.2 million in advertising and attained 36.5% of the national market; Ajax dropped to 36.9%, and all other brands, including Bab-O and Blue Dutch, fell from 44% to 26.6%.

If anything, this tends to show that Procter could have entered the liquid household bleach market on its own if it had desired to do so, and without having to defend the action of the Federal Trade Commission which followed its merger with Clorox. There is no evidence that it had any such intention. The share of the market it could have captured, whether it could have permanently retained it, and the cost, are matters of conjecture.

The Commission further points to an Erie County, Pennsylvania incident which took place after the merger, as evidence of the effectiveness of Procter's intensive advertising and promotion practices. Prior to the Erie incident, Clorox had about 52% of the market in that area, with "101", a brand sold by Gardner Mfg. Co., about 29% of that market. Purex, a competitor of Clorox, was not in the market. Purex decided to enter the Erie market. It introduced a new bottle and an alleged improvement in its bleach. It engaged in an intensive advertising and promotional campaign, offering reductions of ten and fifteen cents

on any size bottle and offering twenty and twenty-five cents reductions on half-gallon and gallon purchases. In about two months Purex captured 33% of the Erie market. Clorox dropped from 52% to 35%, and "101" brand dropped to 17%. Procter retaliated by offering its bleach at three cents off per quart, five cents off per half-gallon, and seven cents off one-gallon sizes. Subsequently it offered a one dollar value ironing board cover for fifty cents with each purchase of Clorox. Procter supplemented the regular newspaper advertising of Clorox with extensive TV spots. The market for Clorox was not only regained but its sales increased by 1% and Purex's share fell to 7%.

It was undisputed that Purex started this "price war". We think Procter was justified in retaliating to defend itself, to meet competition, and to prevent its business from being taken away. The incident revealed the power of Purex, which retreated after Procter adopted protective measures. It should be noted, however, that without the merger Clorox could, and in all probability would have resorted to the same measures and in all likelihood it would have obtained the same results. It had the know-how and the necessary finances to do so.

There was no evidence that Procter at any time in the past engaged in predatory practices, or that it intended to do so in the future. Ample authority exists for the Commission to deal with any such practices when the occasion arises. 15 U.S.C. § 13, Discrimination in prices—Underselling in particular localities; 15 U.S.C. § 14, Tying Agreements; 15 U.S.C. § 45, Unfair methods of competition.

The Commission urges that the merger eliminated a potential competitor, namely Procter. This issue was never raised until after all the evidence was in

and the appeal was taken to the second Commission. There was no evidence tending to prove that Procter ever intended to enter this field on its own. Its promotion department, in considering whether to enter into the proposed merger with Clorox recommended against Procter going into the bleach business on its own. The Commission's finding, therefore, is based on mere possibility and conjecture.

The merger in the present case was neither vertical nor horizontal, but conglomerate. The second Commission has characterized it as product extension. Since the 1950 amendments to Section 7, conglomerate as well as vertical and horizontal mergers come within the proscription of the Act. *United States* v. *Phliadelphia Nat'l Bank*, 374 U.S. 321 (1963); *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962).

In a Section 7 case it is necessary to determine whether there is a reasonable probability that the merger may result in a substantial lessening of competition.

Amended Section 7 was intended to arrest anticompetitive tendencies in their incipiency. *United States* v. *Continental Can Co.*, 378 U.S. 441 (1964); *United States* v. *Philadelphia Nat'l Bank*, *supra*; *Brown Shoe Co.* v. *United States*, *supra*. A mere possibility is not enough, *United States* v. *E. I. DuPont deNemours & Co.*, 353 U.S. 586 (1957); nor is certainty required, *United States* v. *Penn-Olin Chem. Co.*, 378 U.S. 158 (1964).

Prior to the merger Clorox was a well managed adequately financed company, steadily increasing its business and having nearly fifty per cent of the market. It had no competition on the national scale. Competition existed only in regional areas. Procter merely stepped into the shoes of Clorox. Whether or

not it can do better than Clorox in the liquid household bleach field, remains to be seen.

The Nielsen tables showing market share and point change on a unit and dollar basis, for a period of five years prior to the merger and four years after, do not reveal any significant change in the rate of growth of Clorox. Appendix "B".

Both tables showed a decline for Clorox in the year 1961. On the other hand, the total sales of liquid household bleach, other than Clorox, substantially increased both before and after the merger. Appendix "C".

It is obvious therefore that subsequent to the merger, competitors of Clorox sold substantially more bleach for more money than prior thereto. This evidence certainly does not prove anti-competitive effects of the merger. The Commission gave it no consideration.

We think the Commission was in error in ruling that post-merger evidence was admissible only in unusual cases and that it crept into the record needlessly in the present case, and in giving it no weight. This evidence was in the record, not needlessly, but because of the order of the first Commission.

The Commission relied on *F.T.C.* v. *Consolidated Foods*, 380 U.S. 592 (1965). The Supreme Court in that case did not hold that post-acquisition evidence was irrelevant and inadmissible. On the contrary it cited *United States* v. *E. I. DuPont deNemours & Co.*, *supra*, as authority for considering such evidence. See also *Ekco Products Co.* v. *F.T.C.*, 347 F.2d 745 (7th Cir. 1965); *Reynolds Metals Co.* v. *F.T.C.*, 309 F.2d 223, 230 (D.C. Cir. 1962).[2] The Supreme

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[2] Reynolds involved a vertical merger where post-merger evidence offered by the Commission showed that five of

Court said that the post-acquisition evidence should not be given conclusive weight or allowed to override all probabilities. It held that the Court of Appeals in that case attached too much weight to it.

Any relevant evidence must be considered in a Section 7 case involving as it does the drastic remedy of divestiture. The extent to which inquiry may be made into post-merger conditions may well depend on the facts of the case, and where the evidence is obtained it should not be ignored. The weight to be attached to it depends upon all the facts and circumstances of the case.

It is contended that Procter's behavior subsequent to the merger may have been influenced by the pendency of the present proceeding. This is pure conjecture. As before pointed out, Procter was not in the habit of indulging in predatory practices, and if it engages in such practice in the future the Commission has ample power to deal with it.

The Commission and Procter rely on *Ekco Products Co.* v. *F.T.C.*, *supra*, which cited the Commission's decision in the present case. *Ekco* involved two acquisitions, one of which was horizontal, and the other conglomerate. The facts were different in *Ekco* and the Court very carefully limited the decision to the facts of that case.

In considering the question of the substantiality of the evidence, we cannot ignore the two conflicting opinions of the Commission based upon the same evidence. Where an agency overturns findings of fact

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Arrow's seven competitors had by 1957 dropped from 14% to 47% below 1955 sales. If post-acquisition evidence is admissible to prove anticompetitive effects, it should also be admissible to establish that the merger resulted in no lessening of competition.

of a hearing examiner, this fact is considered by a reviewing court. *Universal Camera* v. *N.L.R.B.*, 340 U.S. 474, 496, 497 (1951); *N.L.R.B.* v. *Ohio Calcium Co.*, 133 F.2d 721 (6th Cir. 1943). Here the second Commission rejected the findings of the previous Commission. In our opinion, the same rule applicable to hearing examiners ought to be applied here.

As pointed out by the first Commission, the findings of illegality may not be based upon "treacherous conjecture", possibility, or suspicion. And yet this is exactly what the second Commission indulged in by basing many of its findings and conclusions upon hypotheses which the record shows have never taken place. An illustration of this is the finding that Procter was on the "brink" of entering the market on its own. Household liquid bleach is an old product; Procter is an old company. If Procter were on the brink it is surprising that it never lost its balance and fell in during the many years in which such bleach was on the market. It had never threatened to enter the market. *Cf. United States* v. *Penn-Olin Chem. Co.*, *supra*, at 173.

Other large corporations which were competitors of Procter, such as Lever Bros. and Colgate-Palmolive, had capabilities of entering the field. Monsanto Chemical and Diamond Alkali Co. had engaged in negotiations with Clorox. There are many other large companies in the country which had similar capabilities of entering into a conglomerate merger. There was no reasonable probability that Procter would have entered the household liquid bleach market but for the merger. *United States* v. *Penn-Olin Chem. Co.*, *supra.*

Clorox desired to sell its assets. Its owners were reaching the age of retirement and wanted to transform their stock into a marketable security of a successful company. A small company could not qualify.

Clorox either had to sell to a larger company or not sell at all.

The Commission recognized that complete guidelines for this type of merger have not yet been developed and that the case presented a challenge to it and to the courts "to devise tests more precisely adjusted to the special dangers to a competitive economy posed by the conglomerate merger." We do not believe these tests should involve application of a per se rule.

The Supreme Court has not ruled that bigness is unlawful, or that a large company may not merge with a smaller one in a different market field. Yet the size of Procter and its legitimate, successful operations in related fields pervades the entire opinion of the Commission, and seems to be the motivating factor which influenced the Commission to rule that the acquisition was illegal.

Here Procter was merely adding another product to its line, which was somewhat akin to the products which it was already handling. They were all household items sold in grocery stores. It could have entered the market on its own, but decided not to do so.

Considering the record as a whole, we are of the opinion that the decision of the second Commission is not supported by substantial evidence. *Universal Camera* v. *N.L.R.B., supra.*

We see no point in remanding this case to the Commission. This protracted litigation, which is going on to its ninth year, should come to a close.

The order of the Commission is set aside and the cause is remanded with instructions to dismiss the complaint.

APPENDIX A

MARKET SHARES OF LIQUID BLEACH BRANDS AS SHOWN BY THE NIELSEN FOOD INDEX FOR NINE TERRITORIES

Section of The Country	Clorox	Purex	Fleecy White	Hilex	Linco	Roman Cleanser	All Others
New England	56.0 [9]	—[10]	—	—	—	—	44.0
Metropolitan New York	64.3	—	—	—	—	—	35.7
Middle Atlantic	71.6	—	—	—	—	—	28.4
East Central	42.4	5.0	5.2	0.9	0.7	27.2	18.6
Metropolitan Chicago	28.6	0.1	18.9	0.1	50.3	—	2.0
West Central	34.5	20.6	9.0	25.8	2.1	—	8.0
Southeast	52.6	16.0	5.7	—	—	5.3	20.4
Southwest	48.4	39.6	3.9	—	—	—	8.1
Pacific	39.2	42.4	—	—	—	—	18.4

Source: 154X. The section of the country included in each of the Nielsen territories is shown on page 70 of CX 325 (certified to the Court, but not printed). The accuracy of the Nielsen data was stipulated (820a-21a).

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[9] Percent of total sales of liquid bleach on a consumer dollar basis.

[10] No figure given if the brand listed is not sold in the area.

APPENDIX B

TOTAL UNITED STATES

Nielsen—Liquid Household Bleaches

Summary of Clorox Share Changes

32 oz. Equivalent Unit Basis:

Year Ended	Share	Point Change
August 1, 1953	41.4	—
August 1, 1954	43.0	+1.6
August 1, 1955	44.0	+1.0
August 1, 1956	44.8	+0.8
August 1, 1957	45.3	+0.5
	Total Change	+3.9
	Average Annual Change	+0.975
August 1, 1958	45.8	+0.5
August 1, 1959	46.8	+1.0
August 1, 1960	48.8	+2.0
August 1, 1961	48.6	−0.2
	Total Change	+3.3
	Average Annual Change	+0.825

Dollar Basis at Cost Price to Consumer:

Year Ended	Share	Point Change
August 1, 1953	45.3	—
August 1, 1954	46.4	+1.1
August 1, 1955	47.1	+0.7
August 1, 1956	47.8	+0.7
August 1, 1957	48.4	+0.6
	Total Change	+3.1
	Average Annual Change	+0.775
August 1, 1958	48.7	+0.3
August 1, 1959	50.1	+1.4
August 1, 1960	51.8	+1.7
August 1, 1961	51.9	+0.1
	Total Change	+3.5
	Average Annual Change	+0.875

APPENDIX C

TOTAL UNITED STATES

Nielsen—Liquid Household Bleaches

SALES OF ALL LIQUID HOUSEHOLD BLEACHES— OTHER THAN CLOROX

Prior to Acquisition

Year Ended	32 ounce Equivalent Units	Consumer Dollars
August 1, 1953	270,011,000	$39,178,000
August 1, 1954	273,046,000	40,230,000
August 1, 1955	290,092,000	43,443,000
August 1, 1956	308,797,000	46,638,000
August 1, 1957	319,734,000	49,478,000

Subsequent to Acquisition

Year Ended		
August 1, 1958	329,656,000	$53,910,000
August 1, 1959	345,726,000	56,287,000
August 1, 1960	346,038,000	56,197,000
August 1, 1961	365,354,000	59,254,000

APPENDIX B

No. 15,769

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THE PROCTER & GAMBLE COMPANY, PETITIONER

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

ORDER

BEFORE: WEICK, Chief Judge, PHILLIPS, Circuit Judge, and GREEN, District Judge.

On Petition for Review of an order of the Federal Trade Commission,

This cause came on to be heard on the transcript of the record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the order of the Federal Trade Commission be set aside and the cause remanded with instructions to dismiss the complaint.

No costs awarded. Rule 23(4).

Entered by order of the Court.
/s/ Carl W, Reuss
Clerk

Issued as Mandate: April 14, 1966

COSTS: NONE

Filing fee .....$.....

Printing appendix ....$.....

Total $.....

A True Copy.

ATTEST:

/s/ Carl W. Reuss
CARL W. REUSS, Clerk

APPENDIX C

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
Everette MacIntyre
A. Leon Higginbotham, Jr.

Docket No. 6901

In the Matter of

THE PROCTER & GAMBLE COMPANY, a corporation.

FINAL ORDER

This matter has been heard by the Commission on respondent's appeal from the initial decision of the hearing examiner filed on February 28, 1962. The Commission has rendered its decision, denying the appeal in all respects, and adopting the findings of fact and conclusions of law made by the hearing examiner to the extent consistent with the opinion accompanying this order. Other findings of fact and conclusions of law made by the Commission are contained in that opinion. For the reasons therein stated, the Commission has determined that the order entered by the hearing examiner should be modified and, as modified, adopted and issued by the Commission as its final order. Accordingly,

IT IS ORDERED that:

I.

Respondent, The Procter & Gamble Company, a corporation, and its offices, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within one (1) year from the date this order becomes final, shall divest, absolutely and in good faith, all assets, properties, rights and privileges, tangible and intangible, including but not limited to, all plants, equipment, trade names, trademarks and good will, acquired by The Procter & Gamble Company as a result of the acquisition by The Procter & Gamble Company of the assets of Clorox Chemical Company, together with all plants, machinery, buildings, improvements, equipment and other property of whatever description which have been added to the property of Clorox Chemical Company since the acquisition.

II.

By such divestiture, none of the assets, properties, rights or privileges, described in paragraph I of this order, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, respondent or any of respondent's subsidiary or affiliated corporations, or owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of The Procter & Gamble Company, or to any purchaser who is not approved in advance by the Federal Trade Commission.

III.

If respondent divests the assets, properties, rights and privileges, described in paragraph I of this order,

to a new corporation or corporations, the stock of each of which is wholly owned by The Procter & Gamble Company, and if respondent then distributes all of the stock in said corporation or corporations to the stockholders of The Procter & Gamble Company, in proportion to their holdings of The Procter & Gamble Company stock, then paragraph II of this order shall be inapplicable, and the following paragraphs IV and V shall take force and effect in its stead.

IV.

No person who is an officer, director or executive employee of The Procter & Gamble Company, or who owns or controls, directly or indirectly, more than one (1) percent of the stock of The Procter & Gamble Company, shall be an officer, director or executive employee of any new corporation or corporations described in paragraph III, or shall own or control, directly or indirectly, more than one (1) percent of the stock of any new corporation or corporations described in paragraph III.

V.

Any person who must sell or dispose of a stock interest in The Procter & Gamble Company or the new corporation or corporations, described in paragraph III, in order to comply with paragraph IV of this order may do so within six (6) months after the date on which distribution of the stock of the said corporation or corporations is made to stockholders of The Procter & Gamble Company.

VI.

No method, plan or agreement of divestiture to comply with this order shall be adopted or imple-

mented by respondent save upon such terms and conditions as shall first be approved by the Federal Trade Commission.

VII.

As used in this order, the word "person" shall include all members of the immediate family of the individual specified and shall include corporations, partnerships, associations and other legal entities as well as natural persons.

VIII.

Respondent shall periodically, within sixty (60) days from the date this order becomes final and every ninety (90) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of its actions, plans, and progress in complying with the provisions of this order and fulfilling its objectives.

By the Commission, Commissioner Anderson concurring in the result.

SEAL

/s/ Joseph W. Shea
JOSEPH W. SHEA,
Secretary.

ISSUED: November 26, 1963

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
Everette MacIntyre
A. Leon Higginbotham, Jr.

Docket No. 6901

In the Matter of

THE PROCTER & GAMBLE COMPANY, a corporation.

OPINION OF THE COMMISSION

By Commissioner Elman:

The Commission's complaint, issued on September 30, 1957, charged that respondent's acquisition on August 1, 1957, of all the assets of Clorox Chemical Company violated Section 7 of the Clayton Act, as amended (15 U.S.C. § 18). After extended hearings, the hearing examiner rendered an initial decision in which he found the acquisition unlawful and ordered divestiture. On appeal, the Commission, concluding "that the record as presently constituted does not provide an adequate basis for informed determinations as to the actual or probable effects of respondent's acquisition . . . on competition", and hence that the record "should be supplemented in this respect to the end that all of the issues involved in the case may be finally and conclusively disposed of on their merits", ordered on June 15, 1961, that the initial decision be vacated, that the case be remanded to the hearing

examiner for the reception of additional evidence, and "that after receipt of such additional evidence the hearing examiner make and file a new initial decision on the basis of the entire record herein."

On remand, additional evidence was introduced, and the hearing examiner rendered a second initial decision in which he again found the acquisition unlawful and ordered divestiture. In the course of oral argument on July 11, 1962, before the Commission on appeal from this decision, a question was raised whether the Commission was free to decide the case on the basis of the entire record, or whether it must assume that the record on the first appeal did not support a finding of illegality and confine its attention to the additional evidence introduced on remand. The Commission, believing that the public interest required that the case be decided on the entire record, directed reargument of all contested issues of fact and law (order of November 30, 1962). Reargument was held on January 30, 1963. The case is now ready for final decision on the entire record.

I. *"Law of the Case"*

We meet at the threshold the contention that notwithstanding the Commission's order of reargument, in which its intention to consider the issues of this case on the entire record was clearly announced, such a course is barred by the principle of "law of the case". The principle, that an appellate tribunal will not reconsider its own rulings of law on a subsequent appeal in the same case, is not, we think, applicable here.

The language of the Commission's order of remand, quoted above, should dispel any inference that a ruling on the sufficiency of the evidence to support the complaint was intended. The basis of the order, in

fact, was that the record was inadequate for the making of any ruling, and hence required supplementation; decision of all the issues of the case was expressly postponed by the Commission pending receipt of the additional evidence; and the hearing examiner was directed to file a new initial decision on the basis of the entire record.

It is true that in its opinion accompanying the order of remand, the Commission expressed the view that the post-acquisition data on which the hearing examiner had relied heavily in his first initial decision did not support the examiner's finding of illegality. However, even if this tentative expression of opinion be deemed a ruling of law, plainly it affected only a single, narrow aspect of the case. Inasmuch as the post-acquisition evidence introduced in this case is not a material factor in our decision (see pp. [123-124] below), whatever ruling the Commission may earlier have made as to the relevance or sufficiency of such evidence to support a finding of illegality is, at this point, moot.

In any event, the doctrine of law of the case is not an inexorable command, but "only a discretionary rule of practice." *United States* v. *United States Smelting, Refining & Mining Co.*, 339 U.S. 186, 199; see Note, 65 Harv. L. Rev. 818, 822 (1952). Every consideration of fairness and of the public interest weighs in favor of our now deciding this case on the entire record. For one thing, only one of the present members of the Commission (Commissioner Anderson) participated in the decision of the first appeal. It would be a forced and unnatural exercise for us to consider the evidence introduced on remand in isolation from the rest of the record or attempt to divine how our predecessors would have reacted to that additional evidence. If we are to decide this case fairly

and rationally, we must be free to draw our own inferences from the entire record.

In addition, it is a widely recognized basis for relaxing application of the doctrine of law of the case that the law has changed in the interim. Note, *supra*, at 822, n. 15. The expressions of opinion accompanying the order of remand were based on the view that post-acquisition evidence is crucial in a case of this sort—a view which has been undermined, if not rejected, by two supervening decisions of the Supreme Court (see discussion at pp. [83-89] below). Accordingly, we feel free to consider the issues of this case unfettered by the observations made in the earlier opinion.

Nor can respondent argue that it has been unfairly surprised by being compelled to argue the case on the entire record. It was to eliminate any such possibility of unfairness that the Commission ordered reargument and gave the parties full opportunity to brief and argue the case on the entire record.

The consequence of the Commission's order of remand has been a regrettable delay in the final disposition of an already protracted litigation. However, delays of this kind are perhaps inevitable where, as here, difficult questions of law are presented which the courts have not authoritatively resolved. In any event, the remedy for such delays is not decision of the case in a truncated posture, but clarification of the issues through reasoned decision on the entire record.

II. *The Facts and Background*

The complaint alleges that the effect of the acquisition by respondent, The Procter & Gamble Company (Procter), of the assets of Clorox Chemical Company (Clorox), "may be substantially to lessen competition,

or to tend to create a monopoly", in the manufacture of household liquid bleach throughout the nation.

Household liquid bleach is a 5¼% sodium hypochlorite solution which is used in the home as a germicide and disinfectant and, more importantly, as a whitener in the washing of clothes and fabrics. To a certain extent, the use of household liquid bleach overlaps that of other products, especially powdered bleach; also, liquid bleach in somewhat stronger solution has industrial uses. Nevertheless, the parties appear to agree that household liquid bleach is a distinctive product, recognized as such by the consumer and by the trade, and that it has no close substitutes (see p. [89] below).

At the time of the acquisition, Clorox was the nation's leading manufacturer of household liquid bleach. Its annual sales of slightly less than $40,000,000 represented almost 50% of the national total,[1]

[1] Complaint counsel and respondent's counsel have stipulated the accuracy of the A. C. Nielsen Food Index, a compendium of statistics on the sales volume of various grocery products. The Index gives the following picture of household liquid bleach sales in 1957:

Market Shares of Household Liquid Bleach Manufacturers
(consumer dollar basis)

Brand	Percentage of Total U.S. Sales
Clorox	48.8
Purex	15.7
Roman Cleanser	5.9
Fleecy White	4.0
Hilex	3.3
Linco	2.1
Total	79.8
All Other Brands	20.2

and its market share had been growing steadily for at least five years prior to the acquisition.

As the table in note 1 shows, Clorox's principal competitor is the Purex Corporation. Unlike Clorox, which is engaged almost exclusively in the manufacture of household liquid bleach, Purex manufactures a number of products, including an abrasive cleanser (Old Dutch Cleanser), a toilet soap (Sweetheart), and detergents (Trend and News). Total sales of all its products were approximately $50,000,000 in 1957.

The table shows that in 1957 Clorox and Purex between them accounted for almost 65% of the nation's household liquid bleach sales, and, together with four other manufacturers, for almost 80%. The remaining 20% was divided among 132 listed (in Dun & Bradsteet), and a number of unlisted (roughly 91), small producers. (These figures may be somewhat overstated.) In addition, there seems to be a large number of extremely small, so-called "garage" or "down-cellar" bleach producers. Only eight manufacturers of liquid bleach have assets of more than $1,000,000; very few, in fact, have assets of more than $75,000.

Most manufacturers of household liquid bleach sell at least part of their production to grocery stores and supermarkets for resale to the consumer under the stores' own brand name. These private or house brands, however, appear to account for only a small proportion of the total sales of liquid bleach.[2] Clorox

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[2] In the Nielsen Index, the private brand production of all manufacturers is included in the 20.2% residual category. The Safeway supermarket chain is evidently the only retailer of household liquid bleach that actually manufactures its private brand.

sells no private brand liquid bleach—all of Clorox's bleach is sold under the "Clorox" brand name—and Purex very little.

The equipment, raw materials and labor required in the manufacture of liquid bleach are relatively inexpensive, and neither the product nor its process is the subject of a patent or trade secret. However, owing to its weight, to its low sales price per unit, and to the fact that it is ordinarily sold in bottles, household liquid bleach is expensive to ship. Freight, which the manufacturer pays for—the liquid bleach industry uniformly sells on a delivered-price basis—, commonly averages more than 10% of unit cost. For this reason, household liquid bleach cannot profitably be distributed outside a radius of perhaps 300 miles from the point of manufacture. Most manufacturers, since they have only a single plant, are limited to a regional market. Indeed, Clorox, which has 13 plants distributed throughout the country, is the only producer selling on a national scale. Although Purex has as many plants as Clorox, it does not distribute its bleach in the northeast or middle-Atlantic states. In 1957, Purex bleach was available in less than 50% of the national market. The other manufacturers of liquid bleach are still more limited territorially.[3]

As a result of the territorial limitations of Clorox's competitors, the percentage figures in the table in note 1 do not give an adequate picture of Clorox's position in the various regions of the country. For example, Clorox's seven principal competitors did no

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business in New England, metropolitan New York or the middle-Atlantic states, and Clorox's share of the liquid bleach sales in these areas was 56%, 64%, and 72%, respectively. Even in areas where the principal competitors of Clorox were active, Clorox's share of total liquid bleach sales was high. Except in metropolitan Chicago and the west-central states, Clorox accounted for at least 39%, and often for a much higher percentage, of liquid bleach sales in the various regions.

It is not immediately apparent how Clorox was able to obtain a leading position in the household liquid bleach industry. Clorox is not sold to the consumer at a lower price than other bleaches; on the contrary, it is a premium brand that commonly sells for several cents per quart more than regional, local or private brands. Nor is Clorox a better bleach than other brands; all household liquid bleaches are chemically identical. Nor is the industry plagued by inadequate productive capacity or shortages; none of Clorox's competitors is producing at full capacity, and, as was mentioned earlier, the manufacturing process is relatively simple and inexpensive.

The explanation seems to lie in the way in which household liquid bleach is marketed. It is a low-price, high-turnover consumer product sold mainly to housewives in grocery stores. As a consequence of the growth of the self-service grocery store or supermarket, the consumer is no longer dependent upon the storekeeper's advice in purchasing commonly used, inexpensive household items such as liquid bleach. The housewife purchases the brand that she sees displayed prominently on the shelf or that is familiar and attractive to her by reason of advertising or sales promotions. Since the amount of shelf space that the

grocer gives a particular brand is largely a function of the sales volume of the brand, it is apparent that the success of a particular brand of liquid bleach depends upon the manufacturer's successfully pre-selling it, whether by means of attractive packaging, a low price, advertising and sales promotion efforts, or otherwise. Cf. *United States* v. *Lever Bros. Co.*, 216 F. Supp. 887, 893 (S.D.N.Y. 1963).

Prior to its acquisition by Procter, Clorox had not been active in "sales promotions", a term which embraces such selling devices or gimmicks as price-off labels, two-for-one offers, coupons, free samples, premiums and contests. But it had advertised extensively. In 1957, for example, Clorox spent $1,750,000 for newspaper advertising, $560,000 for magazine advertising, $258,000 for radio and billboard advertising, and $1,150,000 for television advertising. Advertising expenditures, thus, were equal to almost 10% of total sales.

As a result of Clorox's long-continued mass advertising, its trade name had become widely known to and preferred by the consumer notwithstanding its high price and lack of superior quality. Most manufacturers of liquid bleach lack the financial resources to advertise or promote extensively. Purex, it is true, is a large advertiser, but its advertising—and *a fortiori* that of Clorox's lesser competitors—is very possibly less effective than Clorox's because of Purex's territorially limited distribution. It is apparent that the effectiveness of advertising in media of mass circulation normally is enhanced if the product is sold nationally. See, e.g., Bain, *Advantages of the Large Firm; Production, Distribution, and Sales Promotion*, 20 J. of Marketing 336, 340, 344 (1956). Obviously, it is relatively inefficient to pay for national advertising coverage, e.g., in national magazines or network

television, without having national distribution of the advertised product. In general, moreover, it is rarely possible to adjust the dissemination of an advertising message to the precise bounds of the territory in which the advertised product is distributed. In addition, in a nation such as ours, which has a very mobile population, a brand obtainable by the consumer in every part of the country is likely to be better known than and preferred to a product marketed only regionally or locally.

The allegiance to a particular brand that is created by mass advertising and promotion tends, in the case of low-cost, high-turnover household products, to be somewhat ephemeral; the housewife is easily lured from her accustomed brand by promotional and advertising efforts on the part of rival manufacturers. The record in this case contains a graphic illustration of the volatile quality of consumer brand preferences. In Erie, Pennsylvania, Purex launched a major "attack" on Clorox's theretofore entrenched position (Clorox enjoyed more than 50% of the sales in the area) by marketing Purex liquid bleach in a new container and by promoting the "improved" product intensively by means of price-off labels and coupons. Within a few weeks, Purex, which previously had done no business in the area, had won a market share of more than 30%. Clorox immediately counter-attacked, however, and, by means of strenuous promotional efforts (consisting of price-off and premium offers), coupled with intensive advertising, soon forced Purex's share down to 7%.

At the time of its acquisition of Clorox, Procter was one of the nation's 50 largest manufacturers, with total net sales in 1957 of $1,156,000,000. Procter manufacturers a wide range of low-priced, high-

turnover household consumer items sold through grocery, drug and department stores,[4] but prior to the acquisition of Clorox, it did not produce household liquid bleach. Procter's major locus of activity is in the general area of soaps, detergents and cleansers.[5] In 1957, of total domestic sales, more than one half ($514,000,000) were in this field. In packaged de-

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[4] In the answer to the complaint, respondent offered the following "list of the most important brands sold by respondent": *"Soaps, Detergents and Cleansers:* Ivory Soap—all-purpose bar soap; Ivory Flakes—mild all-purpose flake soap; Ivory Snow—mild all-purpose granulated soap; Camay—hard-milled perfumed toilet soap; Lava—pumice hand soap; Duz—detergent and granulated soap; Tide—heavy-duty detergent; Cheer—heavy-duty detergent; Dreft—light-duty detergent; Oxydol—heavy-duty detergent; Dash—low sudsing heavy-duty detergent; Joy—liquid general purpose detergent; Comet—scouring cleanser; Cascade—detergent for automatic dishwashers; Spic and Span—paint and linoleum cleaner; Zest—detergent toilet bar; *Food Products:* Crisco—vegetable shortening; Golden Fluffo—vegetable and lard shortening; Big Top—peanut butter and peanuts; Duncan Hines—prepared baking mixes—15 kinds; *Toilet Goods:* Crest—fluoridated toothpaste; Gleem—toothpaste; Drene—liquid shampoo; Prell—paste and liquid shampoo; Shasta—cream shampoo; Lilt—home permanent; Pin-It—home permanent; *Paper Products:* Charmin—household toilet tissue; Lady Charmin—household toilet tissue; Charmin—facial tissue; Charmin—paper napkins; Charmin—paper towels; Evergreen—industrial paper towels and tissue. On a consumer dollar basis, Procter in 1957 had 31% of the nation's total sales of toilet soap; 32%, dentifrices; 30%, lard and shortening combined; 19%, shampoo; and see p. [58] below.

[5] Soaps, detergents and cleansers, we shall call, for the sake of simplicity, "household cleansing agents". The term is meant to exclude mops, waxes, polishes, brooms and other such relatively high-priced, specialty items used in household cleaning.

tergents alone,[6] Procter's sales were $414,000,000, and this was 54.5% of the national total. In the household cleansing agents industry, Procter's principal competitors are Colgate-Palmolive and Lever Brothers. Together, these three firms account for more than 80% of total sales. Procter is the leading firm of the three. In 1957, total sales of Colgate-Palmolive and Lever Brothers were $291,000,000 and $250,000,000, respectively. There are no other firms in the industry of comparable size. Purex was the next largest after the "Big Three", with sales, as was noted earlier, of about $50,000,000 in 1957, followed by B. T. Babbitt, Inc., with sales of less than $22,000,000.

In the marketing of soaps, detergents and cleansers, as in the marketing of household liquid bleach, extensive advertising and sales promotion seem to be the key to success. Procter is one of the nation's leading advertisers. In 1957, it spent upwards of $80,000,000 on advertising (principally television advertising) in the United States, and was, in fact, the nation's largest advertiser in that year. In addition, it spent $47,000,000 for domestic sales promotions alone. (Procter's total domestic sales in 1957 were approximately $900,000,000.) Colgate-Palmolive and Lever Brothers, Procter's principal competitors, also rank high among the nation's largest advertisers.

The record in this case contains a striking example of the role of advertising and promotion in the household cleansing agents industry. In 1957, Procter introduced a new abrasive cleanser, which it called "Comet". Over a 22-month period, Procter spent $7,-

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[6] The term "packaged detergents" embraces heavy-duty high-sudser detergents, heavy-duty low-sudser detergents, heavy-duty soaps, heavy-duty liquids, light-duty synthetics, light-duty liquids, and light-duty soaps.

200,000 for the advertising and sales promotion of Comet; 20 months after it first appeared on the market, Comet had attained 36.5% of the national market in abrasive cleansers. (The abrasive cleansers industry had total sales of $53,000,000 in 1957—somewhat more than one-half the total sales of household liquid bleach in that year.) It would appear that Comet's success is traceable mainly to the intensive advertising and promotional efforts made on its behalf. (See generally *United States* v. *Lever Bros. Co.*, 216 F. Supp. 887 (S.D.N.Y. 1963); Klaw, "The Soap Wars: A Strategic Analysis", *Fortune*, June 1963, p. 122.)

Procter's acquisition of Clorox was the culmination of two years of study of the liquid bleach industry undertaken by its promotion department in order to determine the advisability of Procter's entering the industry. The first report from the promotion department observed that liquid bleach accounted for 90% of the large and expanding household bleach market and predicted that its ascendancy over powdered bleach would continue in the foreseeable future. The report, however, recommended not that Procter attempt to market its own brand of bleach, as it had repeatedly and successfully done with other household products, but rather that it purchase Clorox. Since, the report advised, "a very heavy investment" would be required for Procter to obtain a satisfactory market share for a new brand of liquid bleach, entry into the industry through acquisition of its leading firm was an attractive alternative. "Taking over the Clorox business . . . could be a way of achieving a dominant position in the liquid bleach market quickly, which would pay out reasonably well." The report predicted that Procter's "sales, distributing and manufacturing setup" could increase Clorox's share of

the market in certain areas where it was low and effect a number of savings that would increase the profits of the business considerably.

A subsequent report from the promotion department confirmed the earlier recommendation, emphasizing that Procter management would be able to make more effective use of Clorox's advertising budget, and that the merger would enable advertising economies.

A few months after the second report was filed, Procter acquired the assets of Clorox in the name of a wholly owned Procter subsidiary, The Clorox Company, in exchange for stock of Procter having a market value of approximately $30,300,000.[7] At the time of the exchange, Clorox's assets were valued at $12,600,000.

Since the acquisition, the top management of Clorox has been placed in the hands of Procter officials, and some degree of integration of Clorox and Procter activities has taken place (see p. [125] below). By and large, however, Clorox has been operated as a separate entity within the Procter organization.

III. *The Legality of the Merger Under Section 7*

A. Categories of Mergers

The hearing examiner, respondent, and complaint counsel concur in describing the merger of Clorox and Procter as "conglomerate". This term, far from denoting a homogeneous class of mergers, tells us only

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[7] The Procter shares received in the exchange were distributed to Clorox's shareholders, whereupon Clorox Chemical Company was dissolved. We shall refer loosely to the entire transaction as the merger of Clorox and Procter or the acquisition of Clorox by Procter.

that the instant merger is neither conventionally "horizontal" nor conventionally "vertical". An analysis of each of these terms is necessary before we proceed further in the discussion of this case.

A horizontal merger, as ordinarily understood, is one between firms that make or sell the same product, or products which are close substitutes for each other. However, unless the firms actually operate within the same geographical market, the merger will have no immediate impact upon the market share of the acquiring firm—the hallmark of a conventional horizontal merger. Where the merger involves companies selling in different geographical markets (or, what may amount to the same thing, to different customer classes, cf. *Brillo Mfg. Co.*, F.T.C. Docket 6557 (decided July 31, 1963)), we have what has been termed a market-extension merger. See *Foremost Dairies, Inc.*, F.T.C. Docket 6495 (decided April 30, 1962). It may be a merger in which the acquired firm sells the same product as the acquiring firm and is a prospective entrant into the geographical market occupied by the acquiring firm. See *United States* v. *El Paso Natural Gas Co.*, 1962 CCH Trade Cases ¶ 70571 (D. Utah), prob. juris. noted, 373 U.S. 930; *Foremost Dairies, Inc., supra*, pp. 48-49. Or the acquiring firm may be a prospective entrant into the market of the acquired firm. *Foremost Dairies, Inc., supra*, pp. 49-50.

Another variant of the conventional horizontal merger is the merger of sellers of functionally closely related products which are not, however, close substitutes. This may be called a product-extension merger. The expression "functionally closely related", as used here, is not meant to carry any very precise connotation, but only to suggest the kind of merger that may enable significant integration in the production, distribution or marketing activities of the

merging firms. As example of a merger enabling integration at the production level would be the merger of a liquid bleach with a liquid starch manufacturer; the manufacturing processes involve many of the same raw materials and equipment. Integration at the level of physical distribution might occur in the case of products which, for example, are shipped together. Integration at the marketing level (including integration of advertising and sales-promotion activities) might result where products manufactured by the merging firms are sold to the same customers or through the same outlets, or are actually complementary.[8]

A vertical merger, conventionally understood, is one between firms at different points on the same chain of distribution, that is, firms which actually or potentially are in the relationship of supplier and customer. Rather similar effects on competition, however, may result from a merger involving the acquisition not of a supplier but of a supplier's supplier.[9]

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[8] See Hale, *Diversification: Impact of Monopoly Policy Upon Multi-Product Firms*, 98 U. Pa. L. Rev. 320, 331-32 (1950). A complementary relationship between products exist "when a rise in the consumption or purchases of one cause a rise in the demand for the other . . . ." Boulding, Economic Analysis 226 (3d ed. 1955). See *United States* v. *Winslow*, 227 U.S. 202. See generally Bowman, *Tying Arrangements and the Leverage Problem*, 67 Yale L. J. 19 (1957). It has been suggested that a multi-product firm's activities be termed "divergent" when integration is enabled at the production level and the products are sold in different markets, and "convergent" when the products, though made through different processes, are sold through the same channels, by the same marketing techniques, or to the same customers. Thorp & Crowder, The Structure of Industry 146 (T.N.E.C. Monograph No. 27, 1941).

[9] See *Consolidated Foods Corp.*, F.T.C. Docket 7000 (decided November 15, 1962). Cf. Bigness and Concentration of

And effects akin to the "reciprocity" which such a merger fosters may flow from any merger involving firms that deal in common with other firms. Thus, the merger of two firms having common marketing outlets might facilitate tie-in or full-line forcing agreements.

Only when the various subcategories of horizontal and vertical mergers have been exhausted (and the foregoing discussion of such subcategories is intended to be suggestive only) do we reach the true diversification or conglomerate merger, involving firms which deal in unrelated products. Cf. H. R. Rep. No. 1191, 81st Cong., 1st Sess. 11 (1949). An extreme example might be the purchase of a newspaper kiosk in New York by a bakery in California.

The merger of Clorox and Procter may most appropriately be described as a product-extension merger. Packaged detergents—Procter's most important product category—and household liquid bleach are used complementarily, not only in the washing of clothes and fabrics, but also in general household cleaning, since liquid bleach is a germicide and disinfectant as well as a whitener. From the consumer's viewpoint, then, packaged detergents and liquid bleach are closely related products. But the area of relatedness between products of Procter and of Clorox is wider. Household cleansing agents in general, like household liquid bleach, are low-cost, high-turnover household consumer goods marketed chiefly through grocery stores and pre-sold to the consumer by the manufacturer through mass advertising and sales promotions. Since products of both parties to the

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Economic Power—A Case Study of General Motors Corporation, Staff Rep. of the Subcomm. on Antitrust and Monopoly of the S. Comm. on the Judiciary, 84th Cong., 2d Sess. 41 (1956).

merger are sold to the same customers, at the same stores, and by the same merchandising methods, the possibility arises of significant integration at both the marketing and distribution levels.

The functional relationship between household liquid bleach and products manufactured by Procter appears to hold even if we look beyond household cleansing agents to the food, paper and toilet products which round out the Procter line. They also are low-cost, high-turnover household consumer goods which are sold largely, although not entirely, through grocery stores and are heavily advertised and promoted.

By this acquisition, then, Procter has not diversified its interests in the sense of expanding into a substantially different, unfamiliar market or industry. Rather, it has entered a market which adjoins, as it were, those markets in which it is already established, and which is virtually indistinguishable from them insofar as the problems and techniques of marketing the product to the ultimate consumer are concerned. As a high official of Procter put it, commenting on the acquisition of Clorox, "While this is a completely new business for us, taking us for the first time into the marketing of a household bleach and disinfectant, we are thoroughly at home in the field of manufacturing and marketing low priced, rapid turn-over consumer products."

B. General Principles in the Interpretation and Application of Section 7

The lawfulness, under Section 7 of the Clayton Act, as amended, of the kind of merger involved in the instant case, is a question largely of first impression. In general, the conglomerate merger (in the broad sense of that term) has received little attention under

the antitrust laws.[10] Its history of neglect appears to be due, first, to the erroneous view that Section 7 in its original form applied only to horizontal mergers [11]—a view which stultified enforcement of the antitrust laws against conglomerate mergers until the amendment of Section 7 in 1950—and, secondly, to economists' preoccupation with the number and size distribution of firms in a single market.[12] But at the same time that the conglomerate merger was being ignored by lawyers and economists, businessmen were resorting to it increasingly as a mode of corporate expansion. Today, many, perhaps most, mergers involving substantial firms are conglomerate, and concern has begun to be voiced.[13]

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[10] The problems of conglomerate power occasionally arise, however, in the context of other provisions of the antitrust laws. See *United States* v. *Griffith*, 334 U.S. 100; *United States* v. *Swift & Co.*, 286 U.S. 106; *United States* v. *Swift & Co.*, 189 F. Supp. 885 (N.D. Ill. 1960); *Alexander Milburn Co.* v. *Union Carbide & Carbon Corp.*, 15 F.2d 678 (4th Cir. 1926); cf. *United States* v. *E.I. duPont de Nemours & Co.*, 188 Fed. 127 (Cir. Ct. D. Del. 1911).

[11] This view was ultimately rejected by the Supreme Court in *United States* v. *E. I. duPont de Nemours & Co.*, 353 U.S. 586. See *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 313, n. 21.

[12] See, e.g., such assertions as, "The fact is that a truly conglomerate merger cannot be attacked in order to maintain competition, because it has no effect on market structure." Adelman, *The Antimerger Act, 1950-60*, 51 Am. Econ. Rev., 236, 243 (Papers and Proceedings, 1961). Cf. *United States* v. *Winslow*, 227 U.S. 202, 217. For a path-finding study of the problems of the conglomerate merger under the amended Section 7, see Neal, *The Clayton Act and the Transamerica Case*, 5 Stan. L. Rev. 179 (1953).

[13] "In a word then, we find that the antitrust laws have failed to stem the horizontal and vertical merger movements

The absence of authoritative, specific precedents in this area compels us to look to basic principles in the interpretation and application of Section 7. The Commission and the federal courts have now had the benefit of more than a decade of enforcement of the amended Section 7, and the numerous decisions construing the statute include two by the Supreme Court. To the principles which have emerged, we turn for guidance in the instant case.

First. All mergers are within the reach of the amended Section 7, whether they be classified as horizontal, vertical or conglomerate, and all are to be tested by the same standard. This is plain not only from the statutory language, but from the legislative

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of the 1890's and the 1920's, and have had no deterrent effect on the conglomerate merger movement of the 1950's and 1960's." Houghton, *Mergers, Superconcentration, and the Public Interest*, in Administered Prices: A Compendium on Public Policy 152, 158 (Comm. Print 1963). See Dirlam, *The Celler-Kefauver Act: A Review of Enforcement Policy*, in *id.*, at 109-10, 130; Federal Trade Commission, Report on Corporate Mergers and Acquisitions 50-51, 54 (1955); Mergers and Superconcentration: Acquisitions of 500 Largest Industrial and 50 Largest Merchandising Firms, Staff Rep. of the H. Select Comm. on Small Business, 87th Cong., p. 44 (Comm. Print 1962). A suggestive statistic in this connection is that between 1947 and 1958, the 50 largest manufacturing firms in the nation increased their share of total value added by manufacture from 17% to 23%; the top 100, from 23% to 30%; the top 150, from 27% to 35%; and the top 200, from 30% to 38%. Mergers and Superconcentration: Acquisitions of 500 Largest Industrial and 50 Largest Merchandising Firms, *op. cit. supra*, at 13. See also Collins & Preston, *The Size Structure of the Largest Industrial Firms, 1909-58*, 51 Am. Econ. Rev. 989 (1961). One economist has suggested that the increasing concentration of the nation's industrial assets in the hands of large firms is attributable to the conglomerate-merger movement. Houghton, *supra*, at 154-55.

history as well: "[T]he bill applies to all types of mergers and acquisitions, vertical and conglomerate as well as horizontal, which have the specified effects of substantially lessening competition * * * or tending to create a monopoly." [14] The inclusion of conglomerate mergers within the scope of the statute cannot be dismissed as casual or inadvertent. This Commission's Report on the Merger Movement (1948), which played an important role in the deliberations leading to the amendment of Section 7, had emphasized the dangers presented by conglomerate mergers: "[T]here are few greater dangers to small business than the continued growth of the conglomerate corporation." *Id.*, at 59. Congress' clearly expressed concern with the conglomerate merger is in striking contrast to the preoccupation of lawyers and economists with tests that look only to the number and size distribution of firms in a single market, and is a challenge to this Commission and to the courts to devise tests more precisely adjusted to the special dangers to a competitive economy posed by the conglomerate merger.[15]

It must be stressed, however, that Congress, in seeking to bring "conglomerate" mergers within the reach of Section 7, did not thereby express the view that conglomerates are analytically a distinct merger class. Congress meant only that however a merger be characterized, its legal status under Section 7 is the

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[14] H.R. Rep. No. 1191, 81st Cong., 1st Sess. 11 (1949); see *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 317.

[15] "Section 7 should be able to check a merger producing or enhancing the power of a giant firm without reference to the effect on concentration ratios in any particular market." Dirlam, *supra*, note 13, at 105. See Bicks, *Conglomerates and Diversification Under Section 7 of the Clayton Act*, 2 Antitrust Bull. 175, 178 (1956).

same. As we have seen, even for purposes purely of description, the traditional threefold classification —horizontal, vertical and conglomerate—is unsatisfactory without considerable further refinement. More important, these definitional distinctions import no legal distinctions under Section 7. The legal test of every merger, of whatever kind, is whether its effect may be substantially to lessen competition, or tend to create a monopoly, in any line of commerce in any section of the country.

Second. The Supreme Court has recently declared "Subject to narrow qualifications, it is surely the case that competition is our fundamental national policy, offering as it does the only alternative to the cartelization or governmental regimentation of large portions of the economy." *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 372. This policy informs all the federal antitrust laws, but some more explicitly than others. Section 7 predicates illegality specifically on the probability of a substantial anticompetitive effect; like the other sections of the Clayton Act, it singles out a particular class of business practices—corporate acquisitions—for especially strict antitrust scrutiny by the courts and the Commission. If the adverse effects on competition specified in Section 7 are proved, it will normally not be open to the respondent to show that redeeming social or economic benefits will flow from the acquisition.[16] In the words of the Supreme Court:

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[16] The single exception is the failing-company defense (see *International Shoe Co.* v. *F.T.C.*, 280 U.S. 291, 299-303), which, although not mentioned in the statute, seems plainly to have been intended by Congress to be carried forward in the enforcement of the amended Section 7. See H.R. Rep. No. 1191, 81st Cong., 1st Sess. 6 (1949); S. Rep. No. 1775, 81st Cong., 2d Sess. 7 (1950). No contention has been

> "We are clear . . . that a merger the effect of which 'may be substantially to lessen competition' is not saved because, on some ultimate reckoning of social or economic debits and credits, it may be deemed beneficial. A value choice of such magnitude is beyond the ordinary limits of judicial competence, and in any event has been made for us already, by Congress when it enacted the amended § 7. Congress determined to preserve our traditionally competitive economy. It therefore proscribed anticompetitive mergers, the benign and the malignant alike, fully aware, we must assume, that some price might have to be paid." *Philadelphia National Bank, supra,* at 371.

While a broad Rule of Reason may not be read into Section 7, it is clear that mergers are not to be judged according to a so-called *per se* standard. In every Section 7 proceeding, the burden is on the complainant to prove that the merger will create a reasonable probability of a substantial lessening of competition or tendency to create a monopoly. This burden is not met, in any case, by invocation of a talismanic *per se* rule by which to dispense with the need for adducing evidence of probable anti-competitive effect. Congress declared neither that all mergers, nor that mergers of a particular size or type, are *per se* unlawful. In every case the determination of illegality, if made, must rest upon specific facts. There may be cases in which a relatively simple test of illegality is appropriate, as the Supreme Court has shown in the *Philadelphia National Bank* case, but this is possible only where consideration of the nature and circumstances

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made in this case that Clorox at the time of the acquisition was other than a profitable, healthy concern.

of the merger in question indicates that such a test will provide an adequate basis for ascertaining whether the statute has been violated; and even in such cases no *per se* rule or conclusive presumption of illegality is applied.[17]

Third. The concept of competition which underlies the amended Section 7 has no simple or obvious meaning, and was defined by Congress neither in the statute itself nor in the course of the deliberations that led to its enactment. But some of its elements, at least, are clear. It has been observed by the Supreme Court that the "dominant theme pervading congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy."[18] Congress' emphasis on concentration reflected its deep concern with what economists would call the problem of oligopoly (see S. Rep. No. 1775, 81st Cong., 2nd Sess. 5 (1950))—a problem that centers on undue or excessive market concentration. Indeed, the relationship between concentration (and related market-structure characteristics) and lessened competition is clearly, we think, at the core of Section 7. For this reason, the specific issues of this case must be placed in a larger frame of reference. Section 7 deals with the fundamentals of a free competitive economic sys-

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[17] The rule applied in the *Philadelphia National Bank* case was one of presumptive illegality. The Court did not suggest that the substantial change in the concentration ratio in the relevant market as a result of the merger created an irrebuttable presumption that the merger would have the effects on competition specified in Section 7.

[18] *Brown Shoe Co., supra,* at 315. See *Philadelphia National Bank, supra,* at 363; Bok, *Section 7 of the Clayton Act and the Merging of Law and Economics,* 74 Harv. L. Rev. 226, 306-07 (1960).

tem, and it is in the context of first principles that we must approach this case.[19]

In a market of, say, 100 sellers of roughly equal size, no seller need—or can—take into account his competitors' probable reactions in establishing his pricing or other business policies. No one seller in such a market is so powerful that he can retaliate effectively against a competitor who cuts prices or otherwise attempts to increase his market share; there are too many firms for deliberately interdependent pricing and other policies to be feasible (actual agreement, of course, would violate Section 1 of the Sherman Act); and no one seller's competitive behavior, however vigorous, is apt to endanger seriously the market share of any of his competitors, or even be apparent to them, since even if one seller increases his market share by 50%, the *pro rata* effect on each other seller's share will be only 1/200th. For these reasons, each seller is likely to establish his business policies in disregard of the actions of any individual competitor.

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[19] The discussion of oligopoly and related economic concepts in the following pages is drawn from works generally accepted as authoritative in the field. See, e.g., Bain, Barriers to New Competition (1956); Bain, Industrial Organization (1959); Chamberlin, The Theory of Monopolistic Competition (7th ed. 1956); Fellner, Competition Among the Few (1949); Machlup, The Economics of Sellers' Competition (1952); Business Concentration and Price Policy (National Bureau of Econ. Research 1955); Monopoly and Competition and Their Regulation (Chamberlin ed. 1954). See also Kaysen & Turner, Antitrust Policy (1959). The Supreme Court in the *Philadelphia National Bank* case, by its repeated citation of economic analyses such as the above works, has clearly indicated the propriety of a reviewing tribunal's consideration of such analyses in reaching its decision in a Section 7 case.

Conditions are very different in a market which has only, say, three sellers, each of equal size. If one cuts prices so as to increase his market share by 50% (i.e., to 50% of the market), each of his rivals will experience a 25% diminution in his respective market share. Unless they can operate profitably with their output thus curtailed, they must meet the price cut of their competitor. If there is active price cutting in such a market, the prices of all sellers will soon be forced down to the point at which they equal or barely exceed marginal cost—and no firm will be making a profit. Rather than incur price warfare that is bound to be mutually disadvantageous, each seller in a market of few sellers (an oligopolistic market) is likely tacitly to renounce price competition, and perhaps other forms of rivalry as well.[20]

What makes such tacit renunciation of price competition feasible in the oligopolistic market, as it is not in the atomistic market, is the fact that the attempt of one seller to increase his market share is bound to have significant repercussions upon the market shares of his competitors, who are compelled, in consequence, to retaliate immediately with a matching price cut. The price cutter "can't get away with it" for very long, and so he is better off refraining from systematic price cutting. The consequence of each firm's refraining from price competition is likely to be an unnaturally high price level in the market and a general deadening of competition. Price leadership, "conscious parallelism", excess capacity, emphasis on heavy advertising in lieu of technological innovation, and "administered prices", are some of the symptoms of oligopoly.

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[20] Bok, *supra*, note 18, at 310.

Of course, not all market structures are so easily classifiable as either atomistic or oligopolistic as those we have described. There is no ascertainable critical point, in terms of the number and size distribution of sellers in the market, at which behavior characteristic of the atomistic market ends and that characteristic of the oligopolistic begins, for everything depends on the psychology of business planners.[21] Analysis of market structure does not tell us at exactly what point a particular firm, by reason of its own and its rivals' market shares, will decide it can no longer afford to ignore the probable reactions of its competitors in setting business policy.

Three further points about market concentration should be made. The first is that a market may be oligopolistic though a number of small firms exist alongside the few dominant firms. See *Philadelphia National Bank*, *supra*, at 367. But the small firms, in such circumstances, will not enjoy the same freedom of action as they would in an atomistic market, for they will not be competing on equal terms with the dominant firms. Where the disparity in market shares as between competitors is very large, the competitive disadvantage of the small firms is apparent. For example, if a firm with a market share of 2% doubles its production, a firm with a 33⅓% share of the same market will lose 2% of its sales. This may well be a sufficiently sharp decline to induce the large firm to meet the small firm's competitive foray, and, if the large firm reacts with great vigor, the result may be the destruction of its small rival. For should the large firm, by dint of vigorous competitive conduct, increase its market share from 33⅓% to 40%,

[21] "Oligopoly is . . . characterized by the state of mind of a seller *vis à vis* other sellers . . . ." Machlup, *op. cit. supra*, note 19, at 351.

the small firm's market share might shrink to nothing. In an oligopoly market, then, given the retaliatory power of companies having a strong market position,[22] small firms tend to exist at the sufferance of their large rivals, and for that reason are likely to opt for peaceful coexistence—not vigorous competition—with those rivals. Small firms in such circumstances characteristically pursue the "quiet life", following the price leadership of the dominant firms in the market and otherwise conforming to the competitive norms established by those firms.

The second point is that oligopoly behavior does not depend upon there being any fixed size ratio among the leading firms. Nor need there be more than a single dominant firm. A market in which one firm enjoys, say, a share of 70%, with the balance divided among a number of other firms, will still exhibit the characteristics of oligopoly. The leader will have the kind of market power that compels his rivals to take his reactions into account in their business planning, and his disproportionate strength will tend to deter his small rivals from vigorous competitive activity.[23]

The third point is that market concentration is a variable of market structure, not of market behavior.

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[22] See Comment, 68 Yale L. J. 1627, 1639, n. 57 (1959). Cf. Edwards, *Conglomerate Bigness As a Source of Power*, in Business Concentration and Price Policy, *op. cit. supra*, note 19, at 331, 335.

[23] Congress, indeed, appears to have been specifically concerned with the problem of single-firm dominance (short of outright monopoly) in amending Section 7. "The bill is intended to permit [legal] intervention . . . when the effect of an acquisition may be a significant reduction in the vigor of competition . . . . Such an effect may arise in various ways: such as . . . [an] increase in the relative size of the enterprise making the acquisition to such a point that its advantage over its competitors threatens to be decisive". H.R. Rep. No. 1191, 81st Cong., 1st Sess. 8 (1949).

Undue concentration itself is not a form of anti-competitive conduct, as, for example, raising prices in the face of declining demand may be; but undue concentration increases the probability that behavior in the market will be non-competitive. In distinguishing market "structure" from "behavior", we do not mean to suggest that our concern is limited to a static, abstract model of market relationships. As will be seen shortly, market structure in a particular industry depends in significant respects upon the techniques of competition, and other dynamic factors, prevailing in that industry.

Although concentration may be the most important market structure variable and the one that was in the forefront of Congressional deliberations on the anti-merger statute, it is not the only such variable and it cannot be adequately understood apart from others. For present purposes, the most significant market structure variable after concentration is the condition of entry into the market by new competitors.[24] No firm will contemplate entry into a new market unless it feels reasonably sure of being able to obtain a satisfactory market share. If the firms in a concentrated market use their market power to maintain a very high price level, the attractiveness of entry is enhanced. For, in such circumstances, the new entrant, by selling somewhat below the prevailing price level in the market, will be able to obtain a foothold in the market yet still operate well above his break-even point, so long as his costs are not substantially higher than those of the firms presently active in the market. Thus, the possibility of entry—potential competition

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[24] It is not the only other such variable, however. For example, competition may be affected by whether the number of buyers from the firms in the market is small (oligopsony).

—may exercise a restraining influence on oligopolists, who will be inclined to maintain a price level low enough to discourage entry, i.e., actual competition. For this reason the existence of barriers to entry into a concentrated market, which enable the established firms to raise prices above a low, entry-discouraging level, is a factor that bears significantly on the existence of oligopoly conditions in the market.[25]

At least three factors may retard entry. The first is the possession of cost advantages by the firms presently occupying the market vis-à-vis prospective entrants.[26] Such advantages may stem from, for example, control of patents, a scarcity of raw materials, or impeded access to channels of distribution (absolute cost advantages), or from scale of operation (advantages or economies of scale). In the case of absolute cost advantages, the prospective entrant can compete with the established firms only at a substantial disadvantage, and the chances that he will be able to obtain a reasonable position in the market are, in consequence, reduced. Even if the prevailing price level in the market is well above his cost level, he will be vulnerable to retaliation by established firms which have a lower cost level and hence a greater flexibility in pricing. As for advantages of scale, the prospective entrant, if he is to compete on equal terms with the established firms, must be prepared to operate

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[25] This is not to say, however, that the absence of substantial entry barriers will ensure effective competition in the market. See Bain, Barriers to New Competition 189 (1956).

[26] See Bain, Industrial Organization 249-51 (1959); Bain, *Conditions of Entry and the Emergence of Monopoly*, in Monopoly and Competition and Their Regulation 215, 226-36 (Chamberlin ed. 1954).

on a sufficiently large scale to be able to obtain the same advantages of scale enjoyed by the established firms. If the scale of optimum efficiency in the industry is substantial, a heavy initial investment may be required. To justify such an investment, the entrant must be in a position to obtain a large market share within a reasonable period of time. In these circumstances, the entrant is not only being made to play the competitive game for high stakes, but, by being forced to enter on a large scale, he is virtually ensuring a swift competitive response by the established firms. They might tolerate the obtaining of a small foothold by a new entrant, but they can hardly sit by while a large share of the market is absorbed by the newcomer.

Another, and perhaps more important, entry-retarding factor is "product differentiation".[27] The term refers to consumer preferences as between very similar, close-substitute products or brands. Such preferences need not, and frequently do not, rest on real or substantial differences in terms of quality or usefulness. By reason of distinctive packaging, the firm's long history, mass advertising and sales promotions, or other factors, a firm may succeed in establishing such a definite preference for its brand that the con-

[27] "[T]he most important barrier to entry discovered by detailed study is probably product differentiation." Bain, Barriers to New Competition 216 (1956). Some commentators, see, e.g., Kaysen and Turner, Antitrust Policy 74 (1959), follow Chamberlin in classifying product differentiation as a distinct market structure variable, rather than subsume it under condition of entry. Since, as will appear, condition of entry as we use that term is relevant not only to new entry, but equally to the competitive vigor of the existing firms in the market, it is of no practical significance whether product differentiation be deemed an independent factor or an aspect of condition of entry.

sumer will pay a premium to obtain it, although it is functionally identical to competing brands. Such brand allegiance, which the prospective entrant, marketing a new brand, will not, of course, command, may be the cumulative result of the expenditure of many millions of dollars over a period of many years to promote the brand, and may, in consequence, be very difficult to counteract even if the entrant makes a very substantial initial investment to promote his own brand.[28] As a result, in an industry in which product differentiation is an important factor, not only may the new entrant find it especially difficult to pry customers loose from the established firms, but the higher price obtainable for a brand that has been successfully differentiated in the public mind from competing brands may impart a flexibility in pricing, akin to that imparted by cost advantages, which the newcomer may not be able to achieve for many years.

The third entry-retarding factor is the financial

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[28] See Bain, Industrial Organization 240, 250, 320 (1959); Bok, *supra* note 18, at 239. The Supreme Court has given explicit recognition to the role, in the repulsion of new competition, of heavy expenditures for product differentiation:

> "The record is full of the close relationship between . . . large expenditures for national advertising of cigarettes and resulting volumes of sales . . . . Such advertising is not here criticized as a business expense. Such advertising may benefit indirectly the entire industry, including the competitors of the advertisers. Such tremendous advertising, however, is also a widely published warning that these companies possess and know how to use a powerful offensive and defensive weapon against new competition. New competition dare not enter such a field, unless it be well supported by comparable national advertising." *American Tobacco Co.* v. *United States*, 328 U.S. 781, 797.

size or strength of the established firms in comparison to that of prospective entrants. Plainly, entry is more effectively deterred by the prospect of an established firm which can well afford to meet a competitive challenge, than by the prospect of a firm small compared to the entrant (though large in its market) or in poor financial condition.

The three entry-retarding factors obviously interact, most notably perhaps in industries in which the dominant firms have succeeded in differentiating their products through mass advertising and sales promotions. As noted earlier (see p. [55] above), advertising in the mass media may not be optimally efficient except on the part of a firm which operates on a national scale; and, obviously, advertising on a national scale demands considerable financial strength. Moreover, the effectiveness of advertising and sales promotions would appear to increase, at least up to a certain point, in direct proportion to their volume. A seller with an advertising and sales promotion budget twice that of his principal competitor not only may be able to recoup his additional selling costs in the premium price that he is able to charge for his brand; in addition, his more intensive advertising and promotional efforts are very likely to increase his market share at the expense of his rivals, because the more advertising and promoting a firm does, the more intensively is the public exposed to and persuaded to buy the firm's brand. Thus, financial strength and large absolute size may be indispensable attributes in enabling a substantial market share to be acquired and maintained in industries characterized by product differentiation through advertising and promotions.[29] At the

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[29] See Bain, Industrial Organization 172-73 (1959); Bain, *Advantages of the Large Firm: Production, Distribution, and Sales Promotion*, 20 J. of Marketing 336, 341 (1956).

same time, given the extent to which effectiveness in the utilization of advertising and other promotional activities seems to be a function of size and strength, the scale necessary for a firm to operate at optimum efficiency in the market may become very large indeed. See Bain, Barriers to New Competition 138 (1956).

It is important to note that the factors making for high entry barriers also make for domination of small competitors by large, and so tend to eliminate actual as well as potential competition. If the large firm enjoys substantial competitive advantages by virtue of product differentiation, cost advantages or financial strength, any attempt by a small firm to expand its market share at the expense of the large firm is unlikely to succeed.[30] By the same token, should the large firm desire to expand its market share, the small firm, lacking comparable financial reserves, pricing flexibility, or a reservoir of accumulated consumer preference, is apt to be the first to lose ground. The power to repel or discourage new competitors, then, is the power to control or discipline existing competitors, to make them reluctant to engage in conduct, such as price cutting, which might provoke retaliatory action on the part of the dominant firms. In

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[30] "In many cases . . . the most important benefit [from increased firm size] is the ability to support far larger budgets for advertising and promotion than a small firm could feasibly assume. Thus, by growing larger, the producer of a retail commodity can increase its capacity to establish consumer preferences for its product to an extent that cannot easily be matched by its smaller rivals. In this way, the relative strength of the largest firm is enhanced, since efforts by smaller concerns to expand their share of the market will tend to be somewhat blunted by the popularity of the more highly advertised product." Bok, *supra* note 18, at 276. See Bain, Industrial Organization 174 (1959).

sum, high entry barriers, like excessive concentration, impair effective competition.

Fourth. The concept of competition upon which Section 7 rests has aspects which transcend the narrowly economic. "Other considerations [besides the danger to the economy posed by unchecked corporate acquisitions] cited in support of the bill [to amend Section 7] were the desirability of retaining 'local control' over industry and the protection of small businesses. Throughout the recorded discussion may be found examples of Congress' fear not only of accelerated concentration of economic power on economic grounds, but also of the threat to other values a trend toward concentration was thought to pose." *Brown Shoe Co., supra,* at 315-16.[31] One commentator has suggested that the legislative history of Section 7 invites "reliance upon a structural theory of competition which stresses the advantages of large numbers of small-sized firms." [32]

We cannot shut out the broad policy considerations which figured so prominently in the deliberations leading to Section 7, however difficult they may be to translate into precise legal criteria. To disregard them, moreover, would be to close our minds to a persistent theme in federal trade regulation. "Throughout the history of these statutes [the federal antitrust laws] it has been constantly assumed that one of their purposes was to perpetuate and preserve, for its own sake and in spite of possible cost, an organization of industry in small units which can effectively compete with each other." *United States* v. *Aluminum Co. of*

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[31] The legislative history is reviewed by Bok, *supra,* note 18, at 234-37, 247.

[32] Bok, *supra* note 18, at 247. Professor Bok, however, criticizes such a test as unworkable. *Id.,* at 248.

America, 148 F.2d 416, 429 (2d Cir. 1945).[33] On the other hand, there is no warrant in the language or history of Section 7 for subordinating the protection of *competition* to the protection of small-business *competitors*.[34]

If the effect of a merger is to place a number of small firms at a severe competitive disadvantage, and the merger cannot be shown to enhance the general competitive vigor of the market, it may be appropriate, in implementing Section 7, to note Congress' patent concern with the preservation, to the extent compatible with social and economic progress, of the fundamental benefits of a small-business, decentralized economy. The interest in fostering equality of opportunity for small business and in promoting the diffusion of economic power, although it may not be identical to the economists' notion of competition, was unquestionably intended by Congress to be relevant in any scheme for the enforcement of Section 7.[35]

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[33] See Thorelli, The Federal Antitrust Policy: Origination of an American Tradition 227 (1954); Dirlam & Stelzer, *The DuPont-General Motors Decision: In the Antitrust Grain*, 58 Col. L. Rev. 24, 41 (1958).

[34] See *Philadelphia National Bank, supra*, at 367, n. 43; *Brown Shoe Co., supra*, at 320; *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576, 588, 592 (S.D.N.Y. 1958).

[35] Compare Adelman, *supra* note 12, at 236; Dewey, *Mergers and Cartels; Some Reservations About Policy*, 51 Am. Econ. Rev. 255, 261-62 (Papers and Proceedings, 1961). "[W]e cannot fail to recognize Congress' desire to promote competition through the protection of viable, small, locally owned businesses. Congress appreciated that occasional higher costs and prices might result from the maintenance of fragmented industries and markets. It resolved these competing considerations in favor of decentralization." *Brown Shoe Co., supra*, at 344.

Fifth. Section 7 embodies a *preventive* antitrust philosophy; Congress wanted the enforcement agencies to be able to arrest the anti-competitive effects of market power in their incipiency. A corollary of Section 7's prophylactic function is that the requirements of proving a violation are less strict than they would be under the Sherman Act. A further corollary is that evidence of market behavior, as opposed to evidence of market structure, is not a necessary ingredient of the prima facie case. If the enforcement of Section 7 against a particular merger were impossible until actual non-competitive practices had been discovered in the market affected by the merger, all opportunity to attack those practices at their root would be lost. Economists teach, and Congress, in enacting the amended Section 7, postulated, that market behavior follows market structure; hence, proof that a merger has created or aggravated a market structure conducive (in a practical, not theoretical or abstract, sense) to practices that substantially lessen competition, or tend to monopoly, is sufficient under the statute. Cf. *Brown Shoe Co., supra*, at 322.

The preventive philosophy reflected in Section 7 has significance not only in fixing the requirements of a prime facie case in a Section 7 proceeding, but in defining the standards of relevancy and materiality governing such a proceeding. The Supreme Court has been quite explicit as to the latter:

> ". . . [T]he ultimate question under § 7 [is] whether the effect of the merger 'may be substantially to lessen competition' in the relevant market. Clearly, this is not the kind of question which is susceptible of a ready and precise answer in most cases. It requires not merely an appraisal of the immediate impact of the merger

upon competition, but a prediction of its impact upon competitive conditions in the future; this is what is meant when it is said that the amended § 7 was intended to arrest anticompetitive tendencies in their 'incipiency.' Such a prediction is sound only if it is based upon a firm understanding of the structure of the relevant market; yet the relevant economic data are both complex and elusive. And unless businessmen can assess the legal consequences of a merger with some confidence, sound business planning is retarded. So also, we must be alert to the danger of subverting congressional intent by permitting a too-broad economic investigation. And so in any case in which it is possible, without doing violence to the congressional objective embodied in § 7, to simplify the test of illegality, the courts ought to do so in the interest of sound and practical judicial administration." *Philadelphia National Bank, supra,* at 362 (citations omitted). See *Brown Shoe Co., supra,* at 341 & n. 68; *Standard Oil Co.* v. *United States,* 337 U.S. 293, 313.

The Court's emphasis appears to be twofold. On the one hand, a statute aimed at arresting practices in their incipiency can deal only with broad probabilities. The very nature of such a statute makes a quest for certainty delusive.[36] This is especially true in an area in which lawyers, not trained in economic analy-

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[36] "A preventive antitrust policy . . . should be directed at activities which on their face have a general and important tendency to reduce competition . . . ." Stigler, *Mergers and Preventive Antitrust Policy,* 104 U. Pa. L. Rev. 176, 177 (1955). Cf. *Brown Shoe Co., supra,* at 323 (Congress' "concern was with probabilities, not certainties").

sis, must nonetheless grapple with what must often appear to be an unintelligible mass of complex economic materials. Not surprisingly, the less sophisticated in economic matters a lawyer is, the more "thorough" a job of economic inquiry he is likely to believe necessary.[37] The emergence of a class of business practices as to which, under the Sherman Act, a substantial anti-competitive effect is conclusively presumed (so-called *per se* offenses) testifies to the exigent need of simplifying the economic issues in antitrust litigation. Even where a *per se* rule is inappropriate, some limitation of the scope of economic inquiry will almost always be necessary and proper, for "the demand for full investigation of the consequences of a market situation or a course of business conduct is a demand for nonenforcement of the antitrust laws." Mason, *Market Power and Business Conduct: Some Comments*, 46 Am. Econ. Rev. 471, 478 (Papers and Proceedings, 1956). In a Section 7 proceeding, an inquiry bent on obtaining and digesting all data arguably relevant in making "some ultimate reckoning of social or economic debits and credits" of the merger (*Philadelphia National Bank, supra*, at 371), but not genuinely probative in making "an appraisal of the immediate impact of the merger upon competition . . . [and] a prediction of its impact upon competitive conditions in the future" (*id.*, at 362), is inevitably self-defeating as the Commission's experience in this class of cases has amply demonstrated.

Furthermore, the danger is acute that if proceedings under Section 7 are allowed to become top-heavy with masses of economic and business data which are

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[37] "[E]rrors in logic and inference will increase when large amounts of complex data must be considered in a conceptual framework that is but partially understood." Bok, *supra*, note 18, at 295.

not strictly probative, the statute will become useless as an enforcement tool. In a merger proceeding, relief short of divestiture is rarely adequate. But divestiture is not a practical remedy unless it is accomplished within a reasonable time after the consummation of the merger. If too much time elapses, the property, good will, management, customers, business opportunities, and other assets and attributes of the acquired and acquiring firms tend to become irremediably commingled, and the acquired firm may lose all vestiges of independence. It may be impossible to reconstitute the acquired firm as a going concern; the patient, as it were, will be too far gone for medicine, or even radical surgery, to do him any good.

Other interests press for the simplyifying and expediting of Section 7 proceedings. One is the interest in business stability and progressiveness. While an action under Section 7 is pending, the business decisions of the merged firm may be characterized by hesitancy and indecisiveness, due to uncertainty about the future of the firm. So also, perfectly lawful mergers may be deterred by the prospect of protracted legal proceedings whose outcome cannot reasonably be predicted. Finally, the effectiveness of Section 7 to check, where necessary in the interest of protecting competition, the very large annual wave of mergers [38] will be impaired if the limited staff and budget of this Com-

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[38] In 1959-61, an average of 650 firms disappeared annually through mergers—more than at any time since 1926-30, the crest of the last great merger movement. These figures are rough estimates, are confined to manufacturing and mining firms, and probably underestimate the actual number of mergers even among those firms. See Mergers and Superconcentration: Acquisitions of 500 Largest Industrial and 50 Largest Merchandising Firms, *op. cit. supra* note 13, at 266. This Commission counted, for example, 1260 industrial mergers in 1962. F.T.C. News Release, Feb. 8, 1963.

mission (and of the Antitrust Division of the Department of Justice) that can be devoted to the enforcement of Section 7 are allowed to be frittered away in unduly complex and protracted proceedings.

That effective relief in a Section 7 proceeding becomes increasingly difficult, to the point of impossibility, over time, coupled with the other considerations we have mentioned, argues in favor of sharply narrowing, wherever possible, the scope of permissible legal inquiry. Clear and relatively simple rules, and the rigorous exclusion of evidence which bears only remotely upon the central concerns of the statute, are essential if Section 7 is not to become a judicial and administrative nullity.

Specifically, we think that the admission of post-acquisition data is proper only in the unusual case in which the structure of the market has changed radically since the merger—for example, where the market share of the merged firm has dwindled to insignificance—or in the perhaps still more unusual case in which the adverse effects of the merger on competition have already become manifest in the behavior of the firms in the market. See *Reynolds Metals Co.* v. *F.T.C.*, 309 F.2d 223 (D.C. Cir. 1962). If post-acquisition data are to be allowed any broader role in Section 7 proceedings, a respondent, so long as the merger is the subject of an investigation or proceeding, may deliberately refrain from anti-competitive conduct—may sheathe, as it were, the market power conferred by the merger—and build, instead, a record of good behavior to be used in rebuttal in the proceeding. One consequence of a receptive attitude toward post-acquisition evidence on the part of the tribunals deciding Section 7 cases is that there will be frequent remands for further such evidence, as the instant case illustrates, until eventually the proceeding may be-

come so protracted as to preclude effective relief, or may terminate in the respondent's favor only because his good-conduct evidence has been considered persuasive. At that point, the respondent is free to take the wraps off the market power conferred by the merger.

More important, given the nature of the concerns that moved Congress to amend Section 7, post-acquisition evidence will rarely have substantial probative value even if the respondent's post-acquisition conduct is not influenced by the threat of legal action. Congress postulated that certain kinds of market structure would ordinarily lead to non-competitive company behavior. If a market structure conducive to non-competitive practices or adverse competitive effects is shown to have been created or aggravated by a merger, it is surely immaterial that specific behavioral manifestations have not yet appeared. In many cases, the converse will also hold true. The fact that non-competitive practices have persisted or even increased in the market since the merger may reveal little about the merger's effects. The behavior of firms is a complex matter; it may be impossible to separate out the various causal factors so precisely as to be able to attribute non-competitive behavior to a particular merger. The same strictures apply to evidence of changes in market *structure* that have occurred since a merger. The full significance of such changes may not become apparent until long after they occur, and their relationship to a particular merger is likely to be obscure.

At all events, the ineffectuality of a wait-and-see policy on the part of the agencies charged with the enforcement of Section 7 should be obvious. If the agencies postpone the commencement or completion of an action challenging a merger in order to see what

trends or results will stem from it, they thereby disable themselves from obtaining or granting effective relief. It bears repeating that an order divesting corporate assets that were acquired a long time before the issuance of the order rarely advances the policies of Section 7.

C. *The Effects of the Instant Merger on Competition*

With the foregoing general principles in mind, we now address ourselves to the ultimate question in this, as in every Section 7, case: whether the effect of the particular merger "may be substantially to lessen competition, or to tend to create a monopoly", "in any line of commerce in any section of the country."

The relevant line of commerce (product market) in this case is alleged to be household liquid bleach (5¼% sodium hypochlorite solution). No contention is made that industrial bleach should be included, and the contention, urged below by respondent, that dry or powdered bleach is sufficiently interchangeable with liquid bleach to be part of the same line of commerce, has not been pursued on appeal. It is clear, at all events, that the examiner's exclusion of powdered bleach from the relevant line of commerce was correct. The evidence shows that liquid and dry bleaches are used for different purposes: dry bleaches are in the light-duty category; liquid bleaches are in the heavy-duty category. Dry bleaches are approximately twice as expensive to use as liquid bleaches and their primary utility is in bleaching fine fabrics that do not respond well to stronger bleaches. To the consumer, liquid and dry bleach are economically and functionally distinct products that are poor substitutes for each other. See *Reynolds Metals Co.* v. *F.T.C.*, 309 F.2d 223, 226-27 (D.C. Cir. 1962);

Crown Zellerbach Corp. v. *F.T.C.*, 296 F.2d 800, 811 (9th Cir. 1961). In any event, at the time of the merger dry bleach accounted for only about 10% of total household bleach sales, so that even if it were included as part of the relevant product market, the market shares of Clorox and its competitors would not be changed substantially.

The relevant geographical market in a Section 7 case ("section of the country") is, in the words of the Supreme Court, "where . . . the effect of the merger on competition will be direct and immediate." *Philadelphia National Bank, supra,* at 357. The complaint charges that the effects of the merger on competition will be felt in the national market for household liquid bleach and in a number of regional submarkets as well. Since high shipping costs impose definite territorial limitations upon the distribution of household liquid bleach, and since Clorox is the sole producer for the national market, the appropriateness of appraising the merger in terms of its alleged impact upon the national market is somewhat questionable. The effects of Procter's acquisition of Clorox will be felt differently in the different regions of the country, according to the market position occupied by Clorox *vis-à-vis* its competitors in each region. Cf. *American Crystal Sugar Co.* v. *Cuban-American Sugar Co.*, 152 F. Supp. 387, 398 (S.D. N.Y. 1957), aff'd, 259 F.2d 524 (2d Cir. 1958). No uniform national impact can be forecast.

Despite the fact that the proper sections of the country in this proceeding are a series of distinct regional markets, no attempt has been made to demarcate these markets, and it is probably not a feasible undertaking.[39] In such circumstances, it is appropri-

[39] The regional breakdowns given in the A. C. Nielsen Food Index (see p. [54] above) represent standardized zones which

ate to use aggregate national figures as approximations of conditions obtaining in the several regional markets. Cf. *Brown Shoe Co., supra*, at 342-43. If anything, the use of such figures favors respondent. Even if the regional sales figures in the Nielsen Index cannot be accepted as accurate market share percentages, they strongly suggest that in many of the geographical markets for liquid bleach Clorox's market share must be considerably higher than its national average, in places approaching monopoly proportions.

Having established the relevant market, we are prepared to analyze its structure, disregarding, for the moment, the impact of the merger upon it. Manifestly, the household liquid bleach industry is highly concentrated and oligopolistic. A small number of firms (6) account for an overwhelming proportion of the industry's sales (80%), and what is left is divided among firms which, absolutely and relatively, are very small. The concentration ratio, in other words, is that characteristic of oligopoly.[40] Among the market

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Nielsen uses for all grocery products, and are not drawn so as to reflect meaningful geographical markets for the household liquid bleach industry. In rejecting these zones as geographical markets for present purposes, we do not mean to suggest that extremely rigorous standards of proof in this area are appropriate or allowable. The Supreme Court has cautioned that certainty in the calculation of the relevant market cannot, and need not, be achieved. *Philadelphia National Bank, supra*, at 361.

[40] Professor Bain would probably categorize the household liquid bleach industry as "highly concentrated". See Industrial Organization 127 (1959). Professors Kaysen and Turner would categorize it as a "Type One structural oligopoly", wherein "the first eight firms have at least 50 percent of total market sales and the first twenty firms have at least 75 percent of total market sales." Antitrust Policy 27 (1959). In the *Philadelphia National Bank* case, after the merger the

leaders, a single firm, Clorox, is dominant.[41] It enjoys almost 50% of the total sales of the industry. Moreover, as the only national seller in an industry strongly characterized by product differentiation through advertising, Clorox enjoys a decisive competitive advantage, and has succeeded in creating a definite consumer preference for the Clorox brand, enabling it consistently to be priced at or above the level of any competing brand. In point of either market share or financial strength, no firm except Purex can be regarded as a significant competitive factor in the industry, and Purex does not compete with Clorox at all in about one-half of the nation. Indeed, in several areas of the country, Clorox faces no competition whatever from the principal firms, such as they are, of the industry (see [pp. 53-54] above).

The factors which make for dominance by Clorox of its rivals also make for formidable barriers to new entry. To be fully efficient, a new entrant into the bleach industry would have to advertise and operate from the outset on at least a broad regional scale,[42] and consequently incur a very heavy initial investment for advertising. To undertake to operate on such a large scale profitably, a prospective entrant must, as we noted earlier, be able to obtain a substantial market share within a reasonable period of time. But if a firm did succeed in acquiring a significant share of one of the regional liquid bleach markets, it

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leading firm in the relevant market had a 30-35% share, and the top 4 firms combined, roughly 78%.

[41] "[W]hen one firm has forty or fifty per cent or more [of the market] . . . competition will seldom plague the industry." Stigler, *supra* note 36, at 181.

[42] Cf. Bain, *Advantages of the Large Firm: Production, Distribution, and Sales Promotion, supra*, note 29, at 344.

would almost certainly provoke a competitive response from Clorox, which could not afford to remain passive in the face of a significant encroachment upon its market position. In the resulting competitive struggle, Clorox, by reason of the substantial accumulated consumer preference for the Clorox brand, would have a great advantage.

There is evidence in this case that before a new brand of liquid bleach can be safely launched, it must be test-marketed locally. Since Clorox is active in every part of the country, it is in a position, by responding promptly to every such test, to prevent a prospective entrant from acquiring the market data it needs in order even to begin to compete. Indeed, this is what Purex claims Clorox did in Erie, Pennsylvania—responded so promptly and vigorously to Purex's competitive sortie that Purex was unable to complete the test-marketing of its new container (see p. [56] above). This incident illustrates, moreover, the two-edged quality of Clorox's dominant position. Not only is it a significant impediment to new entry; it is also an effective barrier to the growth or expansion of Clorox's existing rivals in the bleach industry, and thus an inhibitor of vigorous competitive activity.

Clorox's dominant position in the liquid bleach industry is dramatically shown by the fact that Procter, the nation's largest advertiser and perhaps leading manufacturer of household products comparable to liquid bleach, preferred to pay a very large premium for the good will of Clorox (the $17,700,000 difference between the purchase price of Clorox, $30,300,000, and the valuation of Clorox's assets, $12,600,000, suggests the size of this premium), rather than enter the industry on its own. Few firms—certainly none of the firms now active in the liquid bleach industry, with the possible exception of Purex—are in a posi-

tion to make the investment evidently required to become a fully effective competitor in the liquid bleach industry. Perhaps entry or slight market expansion on the part of very small, neighborhood bleach producers is possible notwithstanding Clorox's dominant position. But the conclusion seems inescapable that at the time of the merger, the industry was concentrated, and barricaded to new entry, to a degree inconsistent with effectively competitive conditions.

What are the consequences for competition if, in an industry such as we have described, a firm such as Procter is substituted for the industry's dominant firm? We find that there are significant areas in which absorption by Procter is likely to affect Clorox's competitive position.

In the first place, the record shows that in the liquid bleach industry the merger of a relatively small, single-product firm with a very large, multi-product firm enables substantial cost savings and other advantages in advertising and sales promotion, especially in television advertising.

The maximum annual volume discounts available to the largest advertisers amount to 25-30% for network television advertising and somewhat smaller but still substantial percentages for magazine, newspaper, and radio advertising. In addition, the discount rates available for local "spot" television advertising favor the large advertiser. In 1957, Clorox spent $1,150,000 on television advertising of all kinds on all stations. While complete discount rates are not included in the record, it is virtually certain that an expenditure of this size spread over all networks and stations did not entitle Clorox to discounts of any substance. For example, a $3,000,000 expenditure on NBC or CBS night time is required for the maximum discount. The record shows that Purex, in time bought in behalf of

its complete line of products, received a 6% discount on an expenditure of $1,400,000 on one network, and a 15% discount on an expenditure of $2,400,000 on another. This was possible because Purex, unlike Clorox, is a multi-product firm, and because an advertiser can combine all of his advertising for all of his products to obtain the volume discount, which is then applied to the advertising for each brand. It is conceded that Procter is entitled to, and receives, the maximum volume discounts available in television advertising and, no doubt, in other media as well. With Clorox now a part of the Procter line, for the same amount of money Clorox spent on network television advertising prior to the merger, at least 33⅓% more network television advertising can now be obtained.

Analogous benefits are obtainable in the other advertising media. The record discloses that maximum volume discounts of between 12% and 17% are available to advertisers in the leading women's or family magazines. An annual expenditure of $1,000,000 or more may be necessary to earn the maximum in a particular magazine. Prior to the acquisition, Clorox received no discounts for magazine advertising. Purex, the record shows, received a small discount in one magazine.

The scale advantages of a large, multi-product firm in advertising are not limited to volume discounts. According to uncontradicted evidence of record, a commercial announcement during a television program is substantially more effective in promoting a product than one during the between-program station break. Not only is the viewer apt to be less attentive during the station break—he may be switching stations, or he may leave the room momentarily—but a brand becomes better known to the consumer by being associated with a program which the consumer watch-

es. Unless Clorox had been willing to put a disproportionate share of its advertising budget into a single venture, it could not, prior to the acquisition, have afforded to buy an entire network television program. Cf. *United States* v. *Lever Bros. Co.*, 216 F. Supp 887, 899 (S.D.N.Y. 1963). Procter, however, can and does buy the sponsorship of such programs in behalf of several of its products, and this means that if Procter includes Clorox among the products advertised on such a program, Clorox can realize the advantages of network program advertising at a fraction of the cost that would have been required prior to the merger. Moreover, even if Clorox could have purchased sponsorship of a program prior to the merger, the same investment, if used now to buy one-third of three shows sponsored by Procter, will result in broadened consumer exposure to the Clorox brand, thereby increasing the effectiveness of the investment.

Another advantage in network program advertising that can be derived from the association of Clorox with Procter arises from the ability of a multi-product national advertiser to run commercials for different products in different sections of the country during a single commercial break. If Procter decides that Clorox needs advertising support in some area where Clorox faces particularly intense competition, it can place a Clorox commercial in that area, and that area only, while the remainder of the country is watching a commercial for one or more of Procter's other products. Clorox thereby gains the advantage of association with network television while actually limiting its advertising expenditures to selected regional markets.

Similar advantages are obtainable by joint promotions, and by joint advertising in the other media. Procter can incorporate promotions for Clorox on the

same in-store display cards as are used for other Procter products and thus receive point-of-sale promotion for several products at the cost of printing, distributing and installing one set of cards. Similarly, premium and special-offer coupons for Clorox can be mailed in the same envelope as those for other Procter products. In this way Clorox reaps the advantage of this type of promotion without having to pay full processing and mailing costs or make the initial investment necessary to launch this promotional method. The record shows that Procter has frequently engaged in combined-product displays and promotions of this sort.

Joint newspaper or magazine advertising of Procter products, including Clorox, also offers the possibility of considerable cost advantages.

A related point is that while prior to the merger Clorox distributed bleach to retailers by means of a network of independent brokers, Procter has a direct sales force for its products, and, were Procter to distribute Clorox bleach through this sales force, distinct promotional advantages would probably result. Independent brokers handle the products of many manufacturers and frequently carry competing brands; they have no particular interest in pushing one brand rather than another. Procter's sales force deals only in Procter products and spends considerable effort assuring these products adequate and prominent shelf space and special displays. In light of the critical role played by shelf space in liquid-bleach competition, use of a direct sales force—a device that may be fully efficient only for a multi-product firm—would in all likelihood substantially increase Clorox's already great market power.

The acquisition also has consequences for the bargaining position of Clorox in its dealings with retail-

ers of liquid bleach. That Procter is the leading producer of a number of products marketed through grocery stores may enable it to induce retailers to give favored treatment to Clorox in the crucial fight for shelf space or otherwise concede especially advantageous terms involving the retail selling of Clorox bleach. We need not go so far as to find that leverage of the kind that supports tie-in and full-line forcing arrangements may be Procter's to wield in behalf of Clorox. Given Procter's position as a well-established producer of a broad range of common grocery items —many of them "must" items (see p. [117] below)—it would seem likely that Procter can obtain from retailers, as a matter not of coercion but of convenience or expediency, certain advantages in the display or marketing of its products which are not available to a single-product producer, such as the pre-merger Clorox. Cf. Machlup, The Political Economy of Monopoly 111-12 (1952).

Another material consequence of the merger is the advent, in the liquid-bleach industry, of a firm with a breadth of experience and degree of financial strength beyond anything possessed by the existing members of the industry. We have already indicated the importance of absolute size in effective advertising; Procter's size, whether measured by sales or assets, is many times greater than that of the largest firm operating in the industry prior to the merger. Furthermore, there is testimony in the record that sales promotions are considered in the main too expensive for a single-product firm in the relatively small-scale bleach industry; thus, at the time of the merger, Clorox was engaged in virtually no sales-promotion activities. Procter, a firm that in 1957 incurred sales-promotion expenses in an amount greater than Clorox's total sales, is in an obvious position to

utilize the sales-promotion technique on a wide scale in behalf of Clorox.

Financial ability, moreover, may play a substantial competitive role in an industry such as liquid bleach quite apart from advertising and sales promotions. The record shows that one way in which a producer may obtain increased shelf space is by offering the merchant a special price, thus enabling the merchant to obtain a higher resale profit margin. To be able to do this frequently and effectively requires the kind of pricing flexibility available only to a firm with ample reserves. So also, it is a fact that consumer preferences for particular liquid bleach brands, even for Clorox, are not invulnerable to competitive inroads; the Erie, Pennsylvania, incident (see p. [56] above) demonstrates the prevalence of local price cutting. Even local price cutting, however, cannot long be maintained by a firm short on reserves. In a price fight to the finish, Procter, whose aggregate scale of operations and fiscal resources dwarf the entire liquid bleach industry, can hardly be bested.

Consideration must also be given to the danger that a multi-product firm such as Procter, operating in a market otherwise consisting of single-product firms, may engage in systematic underpricing having most unfair and destructive effects even though the firm is wholly innocent of any predatory intent. "[T]otal profit may be maximized [in a multi-product firm] . . . by selling some lines below accounting costs." [43]

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[43] Thorp & Crowder, The Structure of Industry 667 (T.N.E.C. Monograph No. 27, 1941). "[D]iversification may so cloud a concern's cost structure as to result in the shelter of inefficiently made products; a given product may be subsidized without the knowledge of its producer." Hale, *supra*, note 8, at 361.

> "A concern that produces many products and operates across many markets need not regard a particular market as a separate unit for determining business policy and need not attempt to maximize its profits in the sale of each of its products, as has been presupposed in our traditional scheme. It may classify its products into such categories as money-making items, convenience goods, and loss leaders, and may follow different policies in selling the different classes." Edwards, *Conglomerate Bigness As a Source of Power*, in Business Concentration and Price Policy 331, 332 (National Bureau of Econ. Research ed. 1955).

Thus, the greater flexibility in pricing enjoyed by the multi-product firm may lead, without predatory motive or purpose, to below-cost selling of a particular product which is in competition with a small firm's single product.

In addition to the concrete competitive advantages in liquid bleach competition which stem from Procter's substitution for Clorox in the liquid bleach industry, some account must be taken of certain intangibles of reputation which Procter unquestionably possesses. Whether or not Procter is in fact a well-managed and aggressive competitor, a question on which the record in this case permits no expression of opinion, the record does disclose that Procter is so regarded by the firms in the liquid bleach industry. To them, Procter is a more feared competitor than was the pre-merger Clorox. Since, as was noted earlier, market behavior is determined by the state of mind of the firms in the market, Procter's history of success, its general size and its prowess, which loom large in the eyes of the small liquid bleach firms, must

for that reason alone be reckoned significant competitive factors.

Enough has been said to establish that the merger of Procter and Clorox adversely affects the market structure of the liquid bleach industry. While the merger has no immediate impact on the number or size distribution of firms in the market, it does have an immediate impact upon another important variable of market structure—the condition of new entry. Procter, by increasing the Clorox advertising budget, by engaging in sales promotions far beyond the capacity of Clorox's rivals, and by obtaining for Clorox the advertising savings to which Procter, as a large national advertiser, is entitled, is in a position to entrench still further the already settled consumer preference for the Clorox brand, and thereby make new entry even more forbidding than it was prior to the merger. In addition, because a multi-product firm of large size enjoys, as has been seen, very substantial competitive advantages in an industry strongly marked by product differentiation through mass advertising, sales promotions, shelf display and related merchandising methods, the prospects become increasingly remote, given the substitution of Procter for Clorox in the liquid bleach industry, that small or medium-sized firms will be minded to enter the industry. The scale of optimally efficient operation in the industry has been so increased, by reason of Procter's advent, that only very large firms—firms on the scale of Procter itself—can reasonably be expected to be able to compete on roughly equal terms in the industry.

In short, the barriers to entry, already very high, have been markedly heightened by the merger—to the point at which few firms indeed would have the temerity or resources to attempt to surmount them.

And, as has been observed, a heightening of entry barriers concomitantly enhances the power of market leaders to dominate their small rivals, and so smother effective competition. Given Procter's materially greater strength, compared to Clorox, as a liquid bleach competitor, vigorous competition by the small firms in the industry would appear still more effectively and substantially inhibited than prior to the merger.

Our finding that, as a result of this merger, the market structure of the liquid bleach industry is significantly less conducive to competition than was the case prior to the merger, is not in any way dependent upon the actual course of Procter's post-merger conduct. We need not attempt to ascertain or predict whether, and to what extent, Procter has taken or will take active steps to obtain for Clorox the potential scale or other advantages accruing from the merger. As has been pointed out, the conditions which retard competition in an industry are to an important degree psychological. They stem from competitors' appraisal of each other's intentions, rather than from the intentions—or the actions taken upon them—themselves. The appropriate standpoint for appraising the impact of this merger is, then, that of Clorox's rivals and of the firms which might contemplate entering the liquid bleach industry. To such firms, it is probably a matter of relative indifference, in setting business policy, how actively a Procter-owned Clorox pursues its opportunities for aggressive, market-dominating conduct. The firm confined by the high costs of shipping liquid bleach, and the high costs of national or regional advertising, within a geographically small area, cannot ignore the ability of a firm of Procter's size and experience to drive it out of business (not necessarily deliberately) by a sustained lo-

cal campaign of advertising, sales promotions and other efforts. See Blair, *The Conglomerate Merger in Economics and Law*, 46 Geo. L.J. 672, 688-89 (1958). A small or medium-sized firm contemplating entry cannot ignore the fact that Procter is a billion-dollar corporation whose marketing experience extends far beyond the limited horizons of the liquid bleach industry and whose aggregate operations are several times greater than those of all the firms in the industry combined. Even a large firm contemplating entry into such an industry must find itself loath to challenge a brand as well-established as Clorox bleach, when that brand is backed by the powerful marketing capacities of a firm such as Procter.

If we consider, in other words, not what Procter will in fact do to exploit the power conferred on it by the merger, or has done, but what it can and is reasonably likely to do in the event of a challenge to its dominant market position in the liquid bleach industry, we are constrained to conclude that the merger has increased the power of Clorox, by dominating its competitors and discouraging new entry, to foreclose effective competition in the industry.

D. *The Substantiality of the Instant Merger's Anti-Competitive Effects*

In finding that the merger of Procter and Clorox has an undesirable effect, from the standpoint of maintaining competition, on the market structure of the liquid bleach industry, we have not determined the legality *vel non* of the merger under Section 7. The statutory test, whether the effect of the merger may be *substantially* to lessen competition, or tend to create a monopoly, has yet to be applied to the facts as found.

The language of Section 7 refutes any notion that every merger whose probable effect on competition is adverse is, for that reason, unlawful. Congress plainly meant to exclude from the proscription of Section 7 mergers having a negligible, abstract, or merely theoretical impact upon the structure of the relevant market. The impact must be significant and real, and discernible not merely to theorists or scholars but to practical, hard-headed businessmen; in a word, it must be "substantial". But substantiality, in the sense used in Section 7, is not a precisely ascertainable quantity; if the statute is to have meaningful application, the courts and the Commission must be content with approximations and estimates. In the *Philadelphia National Bank* case, the Supreme Court confronted with a conventional horizontal merger, held that where such a merger conferred a 30% market share on the acquiring firm and significantly enhanced the combined market shares of the leading firms in the market (by more than 33%), the merger was unlawful, absent mitigating circumstances. The percentages selected by the Court as manifesting undue concentration were admittedly only rough indicators that the merger would have the effect on competition specified in Section 7; but, in the absence of any more precise indicators, they were deemed to satisfy the statute's requirements.

The merger at bar, because it is not a conventional horizontal or vertical merger, does not afford the tribunal which must decide its legality the ready crutch of percentages. The market structure variable—condition of entry—here involved, unlike concentration (or foreclosure, in the case of a conventional vertical merger), is not even roughly translatable into a percentage. We cannot say that barriers to new entry into the liquid bleach industry have been raised, as a

result of this merger, by 10%, 50% or any other exact figure. Nor do the raw figures on, say, cost savings in advertising enabled by the merger permit any dependable quantitative appraisal of the impact of the merger on existing barriers to entry. But the difference here between substantial and insubstantial, like that between night and day or childhood and maturity, is no less real because the dividing line cannot be precisely drawn.

If mergers not falling within certain familiar categories, such as "horizontal" and "vertical", are to be effectively subject to Section 7, as Congress plainly intended them to be, other means—non-percentile and non-quantitative—of roughly, but fairly, estimating the substantiality of a merger's probable adverse effect on competition in the relevant market, must be found. There is, of course, only one place to look for such tools—the area of the basic policy considerations which moved Congress to enact Section 7 in its amended form and which must therefore govern the enforcement of the statute. We find that there are five factors in this case which, taken together (we need not, and do not, consider whether one or more of these factors, taken separately, would be dispositive of the case), persuade us that the instant merger violates Section 7. This set of factors plays the same role in the decision of this case as percentage ratios play in the decision of other merger cases, that of enabling the deciding tribunal to infer with reasonable assurance that the merger has the specified statutory effect, namely, of probably lessening competition substantially; or tending to create a monopoly, in the relevant market. These factors are: (1) the relative disparity in size and strength as between Procter and the largest firms of the bleach industry; (2) the excessive concentration in the industry at the time of

the merger, and Clorox's dominant position in the industry; (3) the elimination, brought about by the merger, of Procter as a potential competitor of Clorox; (4) the position of Procter in other markets; and (5) the nature of the "economies" enabled by the merger.

First. An important consideration is the very great discrepancy in size between Procter and, not only Clorox, but any firm in the liquid bleach industry. In 1957, Procter's sales of packaged detergents alone were 10 times the total sales of Clorox and 8 times the total sales of all of Purex's products combined. Procter's total sales were more than 20 times the total sales of Purex and more than 25 times the total sales of Clorox. In fact, Procter's advertising and sales promotion budget in 1957 was substantially larger than the combined total sales of Purex and Clorox, and very many times the size of Clorox's advertising budget. Such comparisons could be multiplied; they show plainly that Procter is of a different order of magnitude from that of the principal firms in the liquid bleach industry. Indeed, as has been observed, Procter's financial resources and scale of operations overshadow the entire liquid bleach industry.

A size disparity of this magnitude is significant in several ways. First, it is a reliable indicator that the cost advantages enabled by the merger will be substantial and will substantially affect competitive conditions in the market. It would not be practicable to attempt a full-scale cost study of the firms involved in a merger, with a view toward predicting the actual, quantitative impact of the merger on competition. See Bok, *supra* note 18, at 285-86. We must make do, as has been pointed out, with less exacting but nonetheless useful working criteria; and in the circumstances involved in this case, the scale relationship between

the acquiring firm and the principal firms in the relevant market is such a criterion. A merger between Clorox and, say, Purex might not enable substantial cost advantages, since Purex is not very much larger than Clorox; and the acquisition by Procter of, say, a small automobile manufacturer, even if the acquisition enabled substantial cost savings, would not be likely to impart a decisive competitive advantage to the acquired firm, given the scale of its competitors. But we have in this case a situation in which the pooling of expenditures by the merging firms places the acquired firm in a size class many times greater than that in which its own expenditures placed it and many times greater than that of *any* of its competitors. The inference is warranted, therefore, that the effect of this merger is to enable substantial cost savings which impart a substantial competitive advantage to the acquired firm.

To be sure, we might hesitate to draw such an inference in the case of a merger between firms in unrelated industries, or where the obtaining of cost advantages as a result of the merger depended on complex technological factors. But it has been found that Procter and Clorox are functionally closely related firms, the integration of whose marketing activities is not at all a remote hypothesis. And we have found also that the most substantial cost savings obtainable as a result of the merger, savings in the cost of advertising, depend principally on nothing more arcane than the total amount of the pooled expenditures for advertising on a particular network or in a particular magazine.

Second, the size disparity of the acquiring firm vis-à-vis the firms in the relevant market has an obvious materiality where, as here, that market is strongly marked by product differentiation through mass

advertising. The effectiveness of advertising, we have seen, is a function in part of sheer weight, of the sheer volume of a firm's expenditures for advertising. It is therefore intensely relevant not only that Procter must in absolute terms be deemed a large and affluent corporation well able to finance large advertising campaigns, but, more important, that the firms in the liquid bleach industry are decidedly small and weak *relative* to Procter.

Third, size disparity of the unusual degree involved in this case takes on special significance in light of Congress' expressed concern, in amending Section 7, with the preservation, to the extent practicable and consistent with economic and social progress, of competitive opportunities for small business.

Prior to the advent of Procter, household liquid bleach was basically a small-firm industry. The industry's total sales were less than $100,000,000 annually (i.e., less than 10% of Proctor's total sales); many very small firms, perhaps as many as 200, were active in the industry; and the low costs of manufacturing enabled a firm to produce liquid bleach with a relatively small capital investment. Clorox, to be sure, overshadowed the other firms in the industry, but with assets of only $12,600,000, Clorox itself could hardly be regarded as more than a small medium-sized firm. The distinctive nature of the industry threatens now to be utterly transformed by the substitution, for Clorox, of a billion-dollar corporation. Not only does Procter's great size and wide experience permit advertising and sales promotions on a scale hitherto unknown in the liquid bleach industry, but the remaining firms may now be motivated to seek affiliation by merger with giant companies. The practical tendency of the instant merger, then, is to trans-

form the liquid bleach industry into an arena of big business competition only, with the few small firms that have not disappeared through merger eventually falling by the wayside, unable to compete with their giant rivals.

To be sure, there may be firms in this industry that are so small—firms with a purely neighborhood business which engage only in local advertising—as to be relatively unaffected by the substitution of Procter for Clorox, although such firms might very likely be the first casualties in any attempt by Procter to increase Clorox's market position through enhanced advertising or other marketing activities. Nevertheless, in the range between these very small firms, at the lower end, and Clorox, at the upper end, are to be found a number of relatively small firms whose continued existence as independent entities is gravely threatened by this merger.

Precisely this phenomenon, the transformation through mergers of a small-business into a big-business industry, was at the heart of Congress' concern with what it conceived to be an accelerating trend toward excessive concentration of economic power. In the deliberations leading to the amendment of Section 7, illustration after illustration was cited of industries, formerly characterized by the vigorous competition of small firms on a footing of approximate equality, transmuted by mergers into arenas of "monopolistic competition".[44] This manifest Congressional policy has a place in the enforcement of Section 7, and it cannot be disregarded in the instant case, where

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[44] See, e.g., H.R. Rep. No. 1191, 81st Cong., 1st Sess. 3 (1949); Mergers and Superconcentration: Acquisitions of 500 Largest Industrial and 50 Largest Merchandising Firms, *op. cit. supra* note 13, at 15.

over 100 small firms, most with assets of less than $75,000—not to mention prospective small-firm entrants—must now contend with Procter's vast, wide-flung enterprise. In this respect, we may compare the Supreme Court's *Brown Shoe* decision, holding unlawful a merger that did not itself create or aggravate an oligopolistic market structure, but, rather, was feared to be the first step in the transformation of a traditionally small-business, atomistic industry into one dominated by corporate giants.[45]

It should be very clear that, in deeming Procter's size a pertinent consideration in the decision of this case, we are most emphatically *not* adopting any view that bigness *per se* is anti-competitive or undesirable and should be attacked under Section 7 or any other antitrust statute. Procter's size is significant in this case only insofar as it is hugely disparate compared with the size of the firms in the relevant market. Disparity of size, not absolute size, has importance in a merger case of this kind. Moreover, we do not suggest that size disparity is relevant to the decision of every merger case. Quite possibly, there are industries in which size disparity has little or no competitive significance. But we are dealing, in this case, with an industry in which advertising figures very prominently as a factor in competition. And not only is effective advertising at least a partial function of sheer weight (and may, indeed, only be fully practical for a large regional or national seller), which in turn is a function of the financial scale and capacity of the advertiser, but the discount structure of the

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[45] See Adelman, *supra* note 12, at 241; Dean, *What the Courts Are Deciding: An Economist's View*, in The Climate of Antitrust—Second Conference on Antitrust in an Expanding Economy 23, 35 (National Industrial Conf. Bd. ed. 1963).

advertising industry favors very large, national advertisers to an unusual extent. As we have seen, a multi-million dollar diversified firm such as Purex may not be able to qualify for substantial advertising discounts, while a firm the size of Procter can qualify for very substantial such discounts indeed. Size, then, is a factor bearing significantly on competition in the special circumstances of this case, and we need not, and do not, have occasion to expatiate in general terms on the significance of bigness in the application of Section 7 and other antitrust statutes.

Second. Our conclusion, in the foregoing discussion, that liquid bleach is an industry in which Congress would not have wished to see domination by large firms, and that the size disparity of Procter vis-a-vis the small firms of the industry is likely to have a significant effect on the competitive structure of the industry, is not, we think, affected by the fact that, at the time of the acquisition, the market structure of the industry, from the standpoint of the maintenance of a competitive regime, was already decidedly unhealthy. On the contrary, this factor has positive weight in our determination that the merger is unlawful. As the Supreme Court has stated, "if concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great." *Philadelphia National Bank, supra,* at 365, n. 42. A merger that aggravates an already oligopolistic market structure, not by affecting the concentration ratio, as was the case in *Philadelphia National Bank,* but by affecting some other market structure variable, such as condition of entry, is highly suspect under Section 7.

It is arguable, to be sure, that the market structure of the liquid bleach industry was already so inaus-

picious that the substitution of Procter for Clorox cannot have made things worse, that to a firm with resources of a million dollars or less, confined to a small regional market, the difference between a Clorox and a Procter as a competitor must be largely academic. Whatever deleterious effect on competition Procter's entry into an atomistic market might have had, it might be argued, its entry into a market dominated by one firm, by purchase of that firm, could have had no measurable such effect: the market was already rigidly non-competitive.

We are not persuaded by this argument. Despite Clorox's ascendancy, competition has never been wholly absent from the liquid bleach industry. The industry's non-competitiveness has always been relative, rather than absolute. The record is replete with instances of local often intense, price rivalry (for example, the Erie, Pennsylvania, incident) and other kinds of competition (for example, in container design). The substitution of Procter for Clorox, by lending further rigidity to an already oligopolistic industry, could eliminate what competition remains.[46] Even if Procter's entry into the industry by purchase of Clorox has no immediate impact on competitive behavior, which is by no means clear, it must eliminate virtually all possibility of an eventual movement toward deconcentration in the liquid bleach industry. The barriers to entry, already formidable, become virtually insurmountable when the prospective entrant must reckon not with Clorox, but with Procter.

In addition, by taking the place of Clorox, the dominant firm in the highly concentrated liquid bleach

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[46] See *Consolidated Foods Corp.*, F.T.C. Docket 7000 (decided November 15, 1962), p. 21; Bok, *supra* note 18, at 310; Blair, *supra*, p. [103], at 693.

industry, Procter obtains a protected market position built up by Clorox over many years, and, by virtue of Clorox's position of strength in the industry, Procter may be able to strengthen its position in other markets. Economists teach that the possession of market power enables a firm to derive higher profits ("monopoly profits") from its activities in the market than it could under more competitive conditions; the additional profits, in turn, endow the firm with added power to meet its rivals in other markets. In this fashion, substantial market power, which Clorox, as the dominant firm in an oligopolistic market, seems clearly to possess, is transferable as between seemingly unrelated indsutries.[47] This kind of leverage has long been familiar in many contexts of anti-trust enforcement. See, e.g., *United States* v. *New York Great A. & P. Tea Co.*, 173 F.2d 79, 86-87 (7th Cir. 1949). For example, it is one of the premises upon which various forms of vertical integration have been held unlawful. See, e.g., *Reynolds Metals Co.* v. *F.T.C.*, 309 F.2d 223 (D.C. Cir. 1962). It was recently deemed material in a Section 7 proceeding involving a market-extension merger. *Foremost Dairies, Inc.*, F.T.C. Docket 6495 (decided April 30, 1962), p. 44.

Since Procter is already a leading manufacturer of a number of products, its acquisition of Clorox, by strengthening Procter's aggregate market position, may lead to an impairment of competition in many industries besides liquid bleach. And since Clorox

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[47] See Burns, The Decline of Competition 453 (1963); Dirlam & Kahn, Fair Competition: The Law and Economics of Antitrust Policy 142-150 (1954); Adelman, *Integration and Antitrust Policy*, 63 Harv. L. Rev. 27, 45-46 (1949); Stigler, *supra* note 36, at 184; *Blair*, *supra* p. [103], at 686-87; Comment, 72 Yale L. J. 1265, 1269, n. 22, 1270, no. 28 (1963).

and Procter are engaged in the manufacture of closely related products, more direct possibilities of exploiting in other markets Clorox's substantial market power arise—for example, the use of Clorox bleach, as a tying product, loss leader, or cross-coupon offering, in connection with efforts to promote other Procter products. These too are forms of extending monopoly or market power that have long been familiar in antitrust enforcement. See, e.g., *Northern Pac. R. Co.* v. *United States*, 356 U.S. 1. The president of Procter put the matter succinctly: "We may be able to derive additional value from the Clorox name for other new and related products." Purex, for example, is already hard pressed to compete effectively with Clorox in the liquid bleach industry and with Procter in the abrasive cleanser, packaged detergent, and toilet soap industries; it may find itself in a powerful competitive pincers as the result of the fusion of its leading rivals in the several industries in which it is active.

Moreover, it would be a curious result, and one hard to reconcile with the Supreme Court's emphasis on the importance of fostering deconcentration in an already unduly concentrated industry,[48] for this Commission to hold that a firm, if it succeeds in dominating, and substantially eliminating competition in, its own market, thereby becomes freely salable at a high premium to a giant conglomerate enterprise. For the Commission to conclude that the acquisition of a firm which has successfully snuffed out most of the competitive vigor in its market raises no question under Section 7, would be to provide an incentive to firms to achieve market dominance in order to become at-

[48] See [p. 111] above. Cf. Edwards, Big Business and the Policy of Competition 125 (1956).

tractive offerings to the large conglomerate corporations.

In light of these considerations, we are persuaded that a merger involving a leading firm in a market that is already well on the way to a non-competitive structure may be unlawful under Section 7 even where the aggravation of non-competitive market conditions by the merger may seem relatively slight because of the already advanced oligopoly condition of the market. Perhaps conceptual difficulties are encountered if such a merger is deemed to violate Section 7's "substantially to lessen competition" clause, since effective competition may already have substantially disappeared. If so, resort may be had, with entire propriety, to the statute's tendency-to-monopoly clause. For, "'tend to create a monopoly' clearly includes aggravation of an existing oligopoly situation." *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576, 607 (S.D. N.Y. 1958). See Blair, *supra* p. [103], at 699-700. Cf. p. [74], n. 23 above.

Third. A factor closely related to the foregoing is that the merger eliminates the salutary effect of Procter as a *potential* competitor of Clorox in liquid bleach. At the time of the merger, Procter was a progressive and experienced manufacturer of many products in the same product line as liquid bleach; it had in the past frequently extended its product line by introducing a new brand in an industry in which it had not theretofore been active; it was one of the very few manufacturers of household products in the same general line as liquid bleach that was powerful enough to challenge, with some hope of success, Clorox's entrenched position in the bleach market; and it had actually pondered the possibility of entry into the liquid bleach market on its own. By virtue of all these facts, Procter must have figured as a tangible

influence on Clorox's policies until the merger eliminated it as a potential competitor. Procter, though *in absentia*, was nonetheless, by reason of its proximity, size, and probable line of growth, a substantial competitive factor in the liquid bleach market. We have said that the possibility of new entry may exercise a restraining influence upon oligopolistic firms, inclining them to maintain prices at a level low enough to discourage entry. Prior to the merger, Procter was not only a likely prospect for new entry into the bleach market, it was virtually the only such prospect. Once the threat of Procter's entry vanished, one of the last factors tending to preserve a modicum of competitive pricing and business policies in the liquid bleach industry was removed. As the Commission, in a related context, has had occasion to observe, "When market concentration is high, the main, and sometimes the only, restraint on the use of market power by oligopolistic sellers is potential competition." *Foremost Dairies, Inc., supra*, at 50.

We have no occasion to speculate on such questions as whether or not Procter, had its acquisition of Clorox been blocked, would in fact have entered the bleach industry on its own, or whether or not, had it done so, the result would have been to increase competition in the industry—although, with reference to the second question, we note the Supreme Court's recent observation that "one premise of an antimerger statute such as § 7 is that corporate growth by internal expansion is socially preferable to growth by acquisition." *Philadelphia National Bank, supra*, at 370. See Kaysen and Turner, Antitrust Policy 135 (1959). It is sufficient that the tangible possibility of Procter's entry on its own into the liquid bleach industry was a continuing and important pro-competitive influence in that industry, and that the acquisition of

Clorox, by eliminating that possibility, thereby removed a critical check on the power of Clorox to stifle effective competition in the sale of household liquid bleach.

Fourth. Another factor which supports a finding that this merger is illegal is Procter's strong market position in other (and larger) industries, notably packaged detergents, which we have already mentioned. No rigorous analysis of market structure in the other industries in which Procter is active was attempted in this case. It would be impractical, in light of the critical importance of channeling Section 7 proceedings within reasonable bounds of simplicity, to undertake, in every case of a conglomerate merger, a comprehensive study of each market in which the conglomerate enterprise operates. But, if we are not entitled to infer that Procter is able to subsidize Clorox's activities in the liquid bleach market out of "monopoly profits" (including profits attributable to market power short of outright monopoly) gleaned by Procter from its activities in other markets, or otherwise to transfer monopoly or market power enjoyed in other markets into the bleach market (see p. [114] above), we at least know, from the record of this case, that Procter is well established in a number of separate product markets (see [p. 57], n. 4 and pp. [57-58] above). We know, for example, that Procter possesses a 54.5% share of one market, packaged detergents, in which three firms account for 80% of total sales and which we earlier found (see pp. [63-64] above) closely resembles the household liquid bleach industry. On these facts, it is scarcely to be doubted that Procter, the biggest of the "Big Three" of the household cleansing agents industry, possesses some degree of market power in the packaged detergent and other product markets within the general

field, although perhaps not so much as Clorox possesses in its market.

At the least, Procter's manifest strength in markets other than liquid bleach rebuts any inference that Procter cannot wield the advantages that flow both from its own financial size and strength and from the dominant position in the liquid bleach industry enjoyed by Clorox. If Procter were shown to be spread thin throughout its many fields of endeavor, the significance of its apparently decisive competitive advantage over its liquid bleach competitors might be impaired; but that, clearly, is not the case.

Procter's strength in other markets may have, as well, a positive—though by no means conclusive—significance in appraising the effect of this merger on competition in the liquid bleach market. Even if such strength has not been proved to reach the level at which monopoly profits or other fruits of great market power are forthcoming, it is relevant to the psychological response of the members of the liquid bleach industry to Procter as a competitor. To the extent that Procter is thought by them to be not only a large and affluent firm, but also a powerful firm, in terms of market power enjoyed in related markets and possibly transferable into the bleach market, its prowess as a competitor gains an added and even sinister dimension in the eyes of its liquid bleach rivals—a factor of considerable importance to the impact of the merger on competition in the bleach industry. Cf. Blair, *supra* p. [103], at 690; Edwards, *supra* n. 22, at 335-36.

Thus, just as ownership of Clorox may enable Procter to enhance its competitive edge in other markets, so Procter's position in other markets may enhance its dominance, through its acquisition of Clorox, of the liquid bleach industry. Purex, we noted,

now competes with Procter in the liquid bleach as well as in the packaged detergents industry, and it may be inclined to act cautiously in the liquid bleach market for fear of provoking Procter's retaliation along the whole front of Purex's activities.

The short of it is that a conglomerate merger involving firms which have dominant power in their respective markets tends to reinforce and augment such power. Procter's willingness to pay a very substantial amount of money for the good will of Clorox bespeaks its ability, as a large and diversified firm which has seemingly exhausted the possibilities of further expansion in the numerous markets in which it has won a dominant position, to use the ample surplus it has accumulated in the process in order to achieve dominance in still another market by purchase of that market's dominant firm.[49] We emphasize here that we are discussing only corporate expansions through *acquisition*, and not through internal growth. In enacting Section 7, which deals only with mergers, Congress was expressing its special concern with those *acquisitions* which result in the mutual entrenchment of unhealthy market situations, and thus bear grave consequences for the future of our competitive economy.

Fifth. In stressing as we have the importance of advantages of scale as a factor heightening the barriers to new entry into the liquid bleach industry,

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[49] See Klaw, "The Soap Wars: A Strategic Analysis". *Fortune*, June 1963, pp. 122, 198; *Blair, supra* p. [103], at 693; Bogis, *Merger Movements in Industry—The Diversification Threat*, 13 Cartel 32, 37 (Jan. 1963). In this connection we note that between 1955 and 1957, Procter acquired, besides Clorox, a manufacturer of paper products and several manufacturers of food products, for a total consideration, in cash and stock, of about $30,000,000.

and so impairing competitive conditions in that industry, we reject, as specious in law and unfounded in fact, the argument that the Commission ought not, for the sake of protecting the "inefficient" small firms in the industry, proscribe a merger so productive of "efficiencies". The short answer to this argument is that, in a proceeding under Section 7, economic efficiency or any other social benefit resulting from a merger is pertinent only insofar as it may tend to promote or retard the vigor of competition. As the Supreme Court has held (see pp. [68-69] above), Congress did not mean the adjudicators of Section 7 cases to attempt to weigh the ultimate social and economic merits and demerits of a merger, but only to determine its effect on competition and monopoly. A merger that results in increased efficiency of production, distribution or marketing may, in certain cases, increase the vigor of competition in the relevant market.[50] But the cost savings made possible by the instant merger serve, we have seen, not to promote competition, but only to increase the barriers to new entry into the relevant market, and thereby impair competition.

A more complete answer to the argument that this merger should be upheld on account of its "efficiencies" is that cost advantages of scale are of more than one kind, and that the kind involved in this merger, far from representing a net social benefit, is inde-

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[50] However, the danger is very great that where any two firms in an oligopolistic market merge, the fruits of the merger will be used not to enhance, but to retard, competition. See *American Crystal Sugar Co.* v. *Cuban-American Sugar Co.*, 152 F. Supp. 387, 399-400 (S.D.N.Y. 1957), aff'd, 259 F.2d 524 (2d Cir. 1958); Comment, 68 Yale L. J. 1627, 1674 (1959).

pendently offensive to at least the spirit, if not the letter, of the antitrust laws. For one thing, the savings chiefly involved here, which are savings in advertising and sales promotions (Procter does not contend that the merger will enable substantial economies of production or physical distribution), are, it seems, achievable only by firms of very large absolute size. See Bain, Industrial Organization 170, 172-73 (1959). When we reflect that a firm, Purex, with total sales of almost $50,000,000 in 1957 and a proportionally large advertising budget, was evidently unable to obtain any but the minimum volume discounts available to large television advertisers, we can only conclude that the large-scale advertising "economies" involved in this case represent price concessions available only to giant firms, and bear little relationship to ordinary notions of economic "efficiency".

More important, while we do not doubt that marketing economies, including those of advertising and sales promotion, are as socially desirable as economies in production and physical distribution, there does reach a point "at which product differentiation ceases to promote welfare and becomes wasteful, or mass advertising loses its informative aspect and merely entrenches market leaders." [51] We think that point has been reached in the household liquid bleach industry. In short, the kind of "efficiency" and "economy" produced by this merger is precisely the kind that—in the short as well as the long run—hurts, not helps, a competitive economy and burdens, not benefits, the consuming public.

Advertising performs a socially and economically useful function insofar as it educates the consumer to the broad range of product alternatives that he

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[51] Dirlam, *supra* note 13, at 103.

should consider in seeking to make an optimal allocation of his necessarily limited economic resources. Advertising, then, should stimulate competition and, by increasing the sales of the advertised product, lower the unit cost of that product. But this process is distorted in the case of a homogeneous product, such as household liquid bleach, produced under conditions of oligopoly, such as obtain in the liquid bleach industry. Since there is no reason (save cheapness and availability) for a consumer to prefer one brand of liquid bleach over another, there is no real need for the various manufacturers to incur as heavy advertising expenses as they do—except to protect their market shares. Heavy advertising, under such conditions, does not, in any meaningful sense, serve to broaden the consumer's range of product alternatives. Moreover, since oligopolists typically refrain from price competition, large advertising expenditures in the liquid bleach industry have not resulted in a lower unit price to the consumer. (Clorox, the most extensively advertised liquid bleach, is also the most expensive for the consumer.) Thus we have a situation in which heavy advertising benefits the consumer, who pays for such advertising in the form of higher price for the product, not at all.[52]

This situation is simply an example of a latent ambiguity in the term "competition". All forms of business rivalry are, in a sense, "competition", but not necessarily in the sense contemplated by Section 7 and the other antitrust laws. Price cutting is normally a manifestation of healthy competition. Predatory price cutting, however, is not. It tends to stifle true competition, and is often itself a violation of the

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[52] See Taplin, Advertising: A New Approach 107-110 (1963); Blair, *supra* p. [103], at 681.

antitrust laws. Similarly, sellers who vie with one another, through advertising and other promotional activities, to create a consumer preference for their brands, may be laudably engaged in competition such as the antitrust laws are intended to protect. On the other hand, such sellers may, as here, be engaged in brand "competition" to the end only of maintaining high prices, discouraging new entry, and, in general, impairing, not promoting, socially useful competition.

In sum, the undue emphasis on advertising which characterizes the liquid bleach industry is itself a symptom of and a contributing cause to the sickness of competition in the industry. Price competition, beneficial to the consumer, has given way to brand competition in a form beneficial only to the seller. In such an industry, cost advantages that enable still more intensive advertising only impair price competition further; they do not benefit the consumer.

E. *Post-Acquisition Evidence*

In holding this merger unlawful under Section 7, we expressly decline to place reliance on certain facts which, in the view of the hearing examiner, helped demonstrate the merger's unlawfulness. It should be noted that the hearings in this case were conducted for the most part, under the aegis of the Commission's decision in *Pillsbury Mills, Inc.*, 50 F.T.C. 555. Experience in the trial of merger cases, now confirmed by the Supreme Court, has exposed the fallacy of supposing that a broad-gauged inquiry into every business and economic fact remotely relevant to the economic effect of a merger—the kind of inquiry the Commission in *Pillsbury Mills* held it must undertake under Section 7—is productive of more rational decisions. Broad principles of relevancy and materi-

ality may have been appropriate when the law of Section 7 was still fluid and unsettled, but it is now clear that the path toward just and effective enforcement of the statute lies in the direction of narrowing the scope of necessary or permissible inquiry.

In the particular circumstances here, most of the considerable amount of post-acquisition evidence introduced at the hearings was entitled to little weight. We have already canvassed the considerations that make such evidence rarely of much probative value (see pp. [87-89] above); suffice it to say that those considerations are applicable in this case. Were the post-acquisition evidence in this case to be considered, it might furnish some support for the finding we have made wholly on the basis of other factors. Since the merger, Clorox's market share has continued to increase. In 1961, Clorox's overall market share was 51.5% as compared to 48.8% in 1957, while its share in, for example, the New England region, had risen in this period from 56% to 67.5%. Procter has introduced sales promotions on a fairly large scale ($2,000,000 in four years) in behalf of Clorox. Purex has acquired the fourth largest liquid bleach producer (thus increasing concentration in the industry), after, and according to an official of Purex, in part because of, losing a "brand war" to Clorox-Procter in Erie, Pennsylvania. And Procter has obtained, for Clorox, certain advertising economies. None of these phenomena, we think, proves that the merger is unlawful, for it is difficult to know to what extent they were produced by the merger, and not by other factors. However, if we were to consider them, we would have to find that they corroborated or confirmed the conclusion of illegality grounded in solid evidence of the structure of the market at the time of the merger.

Had Procter in fact fully integrated the marketing and other activities of Clorox in its overall organization, perhaps dramatic post-acquisition changes, directly traceable to the merger, would have occurred. But, save for taking advantage of certain advertising cost advantages and introducing sales promotions, Procter in the period covered by the post-acquisition evidence has carefully refrained from changing the nature of the Clorox operation; even the network of independent brokers has been retained. Such restraint appears to be motivated by a general Procter policy of moving slowly and cautiously in a new field until the Procter management feels totally acclimated to it. It is possible, as well, that the pendency of the instant proceeding has had a deterrent effect upon expansionist activities by Procter in the liquid bleach industry.

Most important, however, so far as post-acquisition evidence in this case is concerned, is the fact that there has been no dramatic change in market structure or behavior in the years since the merger. This means that there is no reason to suppose that an analysis based upon market structure at the time of the merger need be reexamined, qualified or discarded in the light of subsequent events. Where, as here, the period since the acquisition has been relatively uneventful, there is certainly no basis for according particular weight to the post-acquisition evidence that found its way, needlessly, into the record.

IV. *Relief*

The last point to be considered is the nature of the relief to be ordered. The order in the initial decision would require respondent to divest itself of the acquired assets through sale. Respondent raises two main objections to this order.

First, it contends that divestiture is not called for in these circumstances, because the public interest can be protected by an order enjoining Procter from exercising the opportunities for enhancing Clorox's dominance of the liquid bleach industry which the Commission has found resulted from the merger. It is settled, however, that divestiture is normally the appropriate remedy in a Section 7 proceeding. *United States* v. *E. I. duPont de Nemours & Co.*, 366 U.S. 316. This case would be a particularly inappropriate one in which to make an exception. The anti-competitive effects of this acquisition are not enjoinable. They inhere in the very presence of Procter, standing in the place of Clorox in the liquid bleach industry, and can be corrected only by restoration of the market structure, so far as possible, as it existed at the time of the acquisition.

Second, respondent objects to the provision in the order entered by the hearing examiner that sale of the acquired assets cannot be made to anyone "who is at the time of divestiture, or for two years before said date was, a stockholder . . ." of Procter. Recognizing that the purpose of a Section 7 proceeding is in no sense punitive, that the sale of an absorbed firm may be difficult to accomplish within a reasonable period of time, and that in the case of a large publicly-owned corporation the common ownership by the shareholders of both the acquired and the acquiring firms is not necessarily inconsistent with a meaningful separation of the firms, the Commission recently approved an order permitting a Section 7 respondent to spin off the acquired assets to a new corporation, the stock of which would then be distributed to the shareholders of respondent. *Consolidated Foods Corp.*, F.T.C. Docket 7000 (decided Nov. 15, 1962), p. 22; see *id.*, Memorandum Accompanying Final

Order (issued March 22, 1963). There is no apparent reason why this respondent should not be permitted thus to spin off the acquired assets to a new corporation or corporations, if it so desires, and we have modified the order entered by the hearing examiner accordingly.

Commissioner Anderson concurs in the result.

November 26, 1963

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

FEDERAL TRADE COMMISSION, *Petitioner,*

v.

THE PROCTER & GAMBLE COMPANY, *Respondent.*

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

KENNETH C. ROYALL,
FREDERICK W. R. PRIDE,
ROBERT D. LARSEN,
200 Park Avenue,
New York, N. Y. 10017.
Attorneys for The Procter & Gamble Company.

RICHARD W. BARRETT,
DINSMORE, SHOHL, BARRETT,
COATES & DEUPREE,
12th Floor Central Trust Tower,
Cincinnati, Ohio 45202.

ROYALL, KOEGEL, HARRIS & CASKEY,
1730 K Street, N. W.,
Washington, D. C. 20006.
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

FEDERAL TRADE COMMISSION, *Petitioner,* v. THE PROCTER & GAMBLE COMPANY, *Respondent.*	No. 342

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

PRELIMINARY STATEMENT

This Brief is filed on behalf of The Procter & Gamble Company ("Procter") in opposition to the Petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit, filed by the Solicitor General on behalf of the Federal Trade Commission ("Commission").

The Petition was filed on July 13, 1966. By order of the Clerk of this Court, the time for filing this Brief in Opposition was extended to September 9, 1966.

QUESTION PRESENTED

The Petition's statement of the "Question Presented" ignores the fact that what is involved here is simply the *unanimous* reversal of a decision of the Commission by a reviewing court of appeals, upon a finding that the Commission's decision was not supported by substantial evidence on the record as a whole.

The only question which can properly be presented here is whether a showing has been made that the court of appeals has failed to make a "fair assessment" of the record or has so "misapprehended or grossly misapplied" its function as a reviewing court as to warrant review by this Court.

The Petitioner's effort is to have this Court disregard the decision of the court of appeals, engage in another review of the record, and decide the issues *de novo*. This in spite of the fact that the decision below expressly and correctly applied controlling principles of law heretofore enunciated by this Court.*

STATUTES INVOLVED

In addition to the "Statutes Involved" as set forth in the Petition, there is also involved Section 10 (e) of the Administrative Procedure Act, 60 Stat. 243, 5 U. S. C. § 1009(e), which provides in pertinent part:

> "(e) . . . the reviewing court shall . . . (B) hold unlawful and set aside agency action, findings, and conclusions found to be . . . (5) unsupported by substantial evidence . . . ."

STATEMENT

The "Statement" of the case as set forth in the Petition fails to present a full and fair "Statement" as to the decision which this Court is asked to review. Omitted entirely from the "Statement" are certain significant facts set forth in the Opinion below. References to other facts are both inadequate and inaccurate.

In supplementation of the Statement in the Petition, the following pertinent facts and circumstances must be noted:

(a) *The nature and import of the first decision of the Commission.*

The Petition contains a passing reference to the fact that, when this case first came before the Commission, it

*It is also urged in the body of the Petition that the decision below is in conflict with a decision of the Court of Appeals for the Seventh Circuit. As we shall later show, this contention is without merit.

reversed the initial decision of the Trial Examiner and remanded the case for additional evidence. Pet., p. 3.* This ignores the real significance of this first Commission decision. For, as stated by the court of appeals, a *unanimous* Commission there held that "the evidence was insufficient to support a finding of illegality." Op., p. 24.

Thereafter, and in the course of a second appeal, the findings and conclusions of the first Commission were rejected by a new body of commissioners. Op., p. 36. The primary importance of this is that the decision of this second Commission was based on the same record as had been passed upon by the first Commission.** As the court of appeals said:

> "The second Commission's decision was based entirely on the record submitted to the first Commission, which that body had ruled to be insufficient to support a finding of illegality." Op., pp. 24-25.

This gives rise to the unique circumstance, completely unnoted in the Petition, that the two Commissions are in irreconcilable conflict. Thus it cannot be said that here there is any decision by the Commission which reflects any consensus of Commission "expertise" or "informed" Commission judgment.

Moreover, this is an adversary proceeding in which the Commission had the burden of establishing a violation of Section 7. Where, as here, two sets of Commissioners have reached opposite determinations on the same record, that fact, in and of itself, is of very real significance in determining whether the Commission has sustained its burden.

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*"Pet." refers to the Petition. "Op." refers to the Opinion of the court of appeals which has been printed as Appendix A to the Petition at pp. 19-40. "Comm'n Dec." refers to the Commission's Decision which has been reprinted as Appendix C to the Petition at pp. 43-127.

**This circumstance occurred because evidence introduced on the remand ordered by the first Commission was held by the second Commission to be "needlessly" in the record. Op., p. 34.

(b) *Pre-merger status of Clorox Chemical Co.*

The court of appeals referred to the following facts respecting the acquired company:

1. Clorox Chemical Co. ("Clorox") was a long established, successful, well managed and well financed company. Its sole business was the manufacture and sale of household liquid bleach. Op., pp. 25, 29.

2. Procter "had never engaged in the manufacture or distribution of household liquid bleach," and "was not a competitor, supplier or customer of Clorox." Op., p. 26.

3. The "merger negotiations were initiated by shareholders of Clorox," (Op., p. 25) who, by reason of "reaching the age of retirement . . . wanted to transform their stock into a marketable security of a successful company." Op., p. 36.

4. ". . . Clorox, and not Procter, had the know-how in the household liquid bleach business as evidenced by its success in starting from scratch and building a $12,000,000 corporation with sales of nearly $40,000,000 annually and obtaining over forty-eight per cent of the market." Op., p. 29.

5. "The finances of Clorox, although not comparable with Procter's, were entirely adequate for its purpose and enabled it to continue its growth and to maintain and increase its share in the market." Op., p. 29.

(c) *Description of the industry:*

The household liquid bleach industry, both before and after the merger, was composed of some 200 producers (Op., p. 27) located throughout the country. As the Commission itself had found, "the equipment, raw materials and labor required in the manufacture of liquid bleach are relatively inexpensive, and neither the product nor its process is a subject of a patent or trade secret." Comm'n Dec., p. 53.

(d) *Reason for the success of Clorox.*

The Petition notes that all "liquid bleaches are chemically identical" and assumes that the success of Clorox was due solely to extensive advertising. Pet., pp. 4-5. But the court of appeals took note of this very point and said:

> ". . . Clorox attributed its success to its maintaining a high degree of quality control in its production process. The fact that prior to the merger its sales accounted for nearly fifty per cent of the market, would seem to indicate its product's wide acceptance and preference by housewives. . . . But even though the advertising [of Clorox] was extensive, the product had to be good in order for it to obtain repeat-purchases by the housewife." Op., pp. 27-28.

(e) *Potential competition.*

The Petition erroneously states:

> ". . . Procter carefully considered entering the liquid bleach industry on its own." Pet., p. 7.

The court of appeals determined that there was no evidence indicating that Procter ever had any interest in entering the business by internal expansion. To the contrary, the court referred to the only evidence bearing upon any such probability. This was a recommendation that Procter *not* go into the business on its own. The court of appeals stated:

> "There was no evidence tending to prove that Procter ever intended to enter this field on its own. Its promotion department, *in considering whether to enter into the proposed merger* with Clorox *recommended against* Procter going into the bleach business on its own."* Op., p. 33.

and

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*Unless otherwise indicated, all emphasis is supplied.

> "There was no reasonable probability that Procter would have entered the household liquid bleach market but for the merger." Op., p. 36.

(f) *Claimed competitive advantages.*

The court of appeals dealt with the alleged competitive advantages relied upon by the Commission respecting distribution, marketing, advertising and financial resources. Op., pp. 29-30. It held that there was no substantial evidence to support the Commission's findings that any of such alleged advantages were probable or, even if probable, would be likely to bring about any substantial lessening of competition in the industry.

(g) *Post-acquisition evidence.*

As is indicated in the Petition, the record contains evidence respecting competitive conditions in the industry for the four years following the acquisition. The Petition's reference to this evidence is inadequate. Passed over entirely are facts, noted in the Opinion below, demonstrating that in the post-acquisition years there was a most substantial increase in the volume and dollar amount of the sales by Clorox's competitors and that year after year those competitors sold more bleach for more money than in the pre-acquisition years.

The court of appeals said:

> "And the post-merger evidence was to the effect that the other producers subsequent to the merger were selling more bleach for more money than ever before." Op., p. 28.

(h) *Predatory practices.*

The court of appeals further found:

> "There was no evidence that Procter at any time in the past engaged in predatory practices, or that it intended to do so in the future." Op., p. 32.

We think that the foregoing supplementation is essential to any consideration of the Petition by this Court. For it plainly indicates that the decision below was confined to the particular (and indeed sometimes unique) facts and circumstances of this particular record. And it was the totality of such facts and circumstances which was relied upon by the court of appeals in arriving at its determination that the Commission's decision was not supported by substantial evidence.

REASONS FOR DENYING THE WRIT

1. The court of appeals properly discharged its reviewing function. Its decision should not be the subject of further review.

There can be no valid dispute as to the basis of the decision below. It was summarized in the court's opinion as:

> "Considering the record as a whole, we are of the opinion that the decision of the second Commission is not supported by substantial evidence." Op., p. 37.

That this was the decisive question below was recognized by Petitioner itself. It framed the issue before the court of appeals in the following language:

> "Was the Commission's holding that Procter's acquisition of Clorox Chemical violated Section 7 *supported by substantial evidence* and in accordance with law?"

And the Commission's argument below was directed to its contention that, on the whole record, there was substantial evidentiary support for its decision. It was this precise contention which the court of appeals rejected.

(a) Analysis of the review and decision below.

In its review of the Commission's decision, the court of appeals was first faced with the singular circumstance that two sets of Commissioners had passed upon the decisive

issue here. As the court noted, the first decision of the Commission had ruled that this record was "insufficient to support a finding of illegality"* (Op., p. 24); and the "second Commission rejected the findings of the previous Commission" and arrived at a diametrically opposed conclusion. Op., p. 36.

The court of appeals was cognizant of the consequences of this insofar as any single "Commission judgment" was concerned. In adverting to this, it said:

> "In considering the question of the substantiality of the evidence, we cannot ignore the two conflicting opinions of the Commission *based upon the same evidence.*"** Op., p. 35.

Faced with this extraordinary situation, the court then proceeded to test the validity of the decision of the second Commission against the evidence in the record. It found that such evidence could not measure up to the required standards.

The court of appeals recognized that in line with the provisions of Section 7 itself, and the decisions of this Court interpreting it, two factors are essential to any determination of illegality. One is that there be the "probability" that anti-competitive effects would result from a chal-

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*While the court of appeals noted that the first decision was "interlocutory in nature" and "subject to reconsideration and change" (Op., p. 22), it was such in only one sense. The Commission reserved its jurisdiction to determine whether the post-acquisition evidence, which it had directed should be adduced on the remand, established any facts contrary to the conclusions at which it had arrived on the record before it. In no sense was the decision of the first Commission equivocal or indecisive in respect of the insufficiency of the evidence in the record prior to the remand.

**Thus, the unique circumstances of this case permit no reliance upon any special expertise or experience of the Commission. For the necessary premise for any such reliance is that there be an informed administrative decision which reflects the Commission's considered judgment respecting the ultimate conclusions necessary to find a violation of the statute. Here, no such judgment was before the reviewing court. Here, there was no consensus of any alleged "expertise" of the Commission.

lenged acquisition. The other, that any such effects would probably result in a substantial lessening of competition.

As to these requisite "probabilities", the ultimate findings of the Commission were predicated upon a number of subsidiary findings. These embraced all of the areas in which it was claimed that the effects of the acquisition might be manifested. They dealt with, *inter alia*, the conditions of competition in the industry at the time of the acquisition; the probability and effect of all of the alleged competitive advantages which the Commission charged might flow from the acquisition; the consequences allegedly attaching to the availability of Procter's resources in the operation of the Clorox business; the alleged impact of the acquisition upon actual and prospective competitors; and the alleged elimination of Procter as a potential competitor in the liquid bleach industry.*

It was these findings which were the very core and essence of the Commission's decision.** The Commission relied upon the totality of such findings in concluding that the acquisition violated Section 7. It expressly disclaimed any consideration or determination of whether any "one or more of these factors, taken separately, would be dispositive of the case." Comm'n Dec., p. 105.

As is apparent from its Opinion, the court of appeals made an independent, painstaking review of the record in this case. It dealt expressly with each of the Commission's controlling findings and with the evidence pertaining to each.

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*Of course, there is no claim that Procter and Clorox were "competitors" in any sense of the word. Nor is there any claim that the acquisition brought about any automatic elimination of competition. Nor does the Petition claim that it brought about any increase in concentration within the industry.

**The Petition omits any mention of the fact that the record here contained 6346 pages of testimony and 858 Exhibits. It was the product of extended hearings held throughout the country. It touched upon every aspect of the acquisition which competent counsel for the Commission could conjure up as a ground for invalidating the merger. See Joint Appendix, Volumes 1-4, copies of which have been certified to this Court.

There is nothing to indicate that the court's review did not represent "a fair assessment" of the record. Nor, indeed, is any such suggestion advanced in the Petition.

The court of appeals rejected each of these controlling findings as being unsupported by substantial evidence.* In making this determination the Opinion below discloses that the court thoroughly understood and carefully followed the teachings and rulings of this Court respecting the scope and meaning of Section 7.

Thus, the court expressly noted that conglomerate mergers come within the proscription of the statute. *Federal Trade Commission* v. *Consolidated Foods Corp.*, 380 U. S. 592; *United States* v. *Philadelphia National Bank*, 374 U. S. 321; *Brown Shoe Co., Inc.* v. *United States*, 370 U. S. 294. It recognized that Section 7 was concerned with arresting anti-competitive tendencies in their incipiency. *United States* v. *Continental Can Co.*, 378 U. S. 441; *Philadelphia National Bank* and *Brown Shoe*. While acknowledging that mere possibility is not enough, it did not hold the Petitioner to any proof of certainty. *United States* v. *Penn-Olin Chemical Co.*, 378 U. S. 158; *United States* v. *E. I. du Pont de Nemours & Co.*, 366 U. S. 316. It clearly applied to this acquisition the criteria laid down by this Court as to the meaning and significance of "potential competition" in a Section 7 proceeding. *United States* v. *El Paso Natural Gas Co.*, 376 U. S. 651 and *Penn-Olin*. It scrupulously adhered to decisions of this Court respecting the relevance of, and weight to be attached to, post-acquisition evidence. *Consolidated Foods* and *du Pont*. Respecting the legality of this conglomerate merger, it gave expression to

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*In passing we note that at two places in the Petition it is stated "the court of appeals did not disturb the Commission's factual findings." Pet., pp. 7, 11. This claim cannot be reconciled with the Opinion of the court of appeals. For certainly, as is abundantly evident from that Opinion, the court not only "disturbed" controlling and essential findings of the Commission, it held them to be without evidentiary support, whether they are to be classified as "factual" findings or otherwise.

the tests enunciated in *Brown Shoe* and other decisions of this Court.

(b) Recognized principles respecting the exercise of this Court's reviewing function should lead to the denial of the Petition.

In the light of all of the foregoing, the principles of review enunciated by this Court in *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U. S. 474, and cases following it, are clearly applicable here. This Court there gave expression to the function and authority of Courts of Appeals in reviewing decisions of administrative agencies. It pointed out that such agency decisions must be supported by "substantial evidence"; that whether there is such "substantial evidence" is a question which the Congress has placed in the keeping of the Courts of Appeals; and that this Court should intervene only in the "rare" instance where the standard of review was "misapprehended or grossly misapplied."*

The Opinion below on its face plainly shows that the court of appeals fully understood its reviewing function.

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*However unnecessary, we here set forth the significant language in this Court's opinion (concurred in by a unanimous Court):

> "Congress has imposed on [reviewing courts] responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals. . . .
>
> ". . . .
>
> "Our power to review the correctness of application of the present standard ought seldom to be called into action. *Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals. This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied.*" 340 U. S. at 490-91.

The foregoing principles have been consistently reaffirmed and followed by this Court.

Contrary to the suggestion in the Petition that the court of appeals only "purported" to be appraising the evidence, the clear fact is that it dealt with each facet of the Commission's decision. It concluded that there was no substantial evidence to justify that decision.

We repeat: This is an "evidence" case. The Petitioner's effort to treat it as something else and to imply that a departure from the principles of *Universal Camera* is in order here, are without merit.

We do not suggest that this Court is unalterably committed to the denial of review to all determinations of Courts of Appeals which profess to be predicated upon an evaluation of the substantiality of evidence. We do say, however, that this Court should require a compelling showing that questions are raised which require a departure from the salutary principles of judicial review discussed above. The Petition here contains no such showing.* Intervention here by this Court would improperly impugn the authority, ability and prestige of Courts of Appeals. It would be an ill-advised enlargement of the proper judicial functions of this Court.

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*Compare the petition for certiorari in *Federal Trade Commission* v. *Consolidated Foods*, No. 422, October Term, 1964, from which certain language has been carried over into the Petition here. But that petition stressed two factors as warranting review: (a) the competitive significance of a merger which "introduces" a recognized anti-competitive factor, such as "reciprocity", into an industry; and (b) whether post-acquisition evidence could be given "decisive weight" by a reviewing court.

Here no contention is advanced that the effect of the acquisition was to introduce any one of the "congeries" of recognized anti-competitive practices, such as reciprocity, which automatically bring about a lessening of competition. Respecting post-acquisition evidence, this Court's decision in *Consolidated Foods* established the principles of law which control the evaluation of such evidence in a Section 7 case. No further exposition of these principles is required. There being no open questions of law raised here, we urge that the grant of certiorari in *Consolidated Foods* is in no sense any precedent for the grant here.

2. The Petition states no valid reasons why there should be any departure from the principles of review discussed above.

Petitioner understandably omits any reference to the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. § 1001 *et seq.*, as amended) or to the principles of review discussed above. It urges that, regardless of the determination by the court of appeals respecting the substantiality of the evidence, its decision is "unsound". Pet., p. 11. But when analyzed, the reasons which are advanced for this contention all concern the substantiality of the evidence. All of them are designed to induce this Court to re-examine the factual record in this case. In no way do they sustain the Petitioner's burden of demonstrating that this is a proper case for review.

(a) The court of appeals did not exceed its authorized scope of review in rejecting "predictions" of the Commission.

The Petition asserts that the court of appeals was in error in rejecting the Commission's predictions as to the "likely course of future competition" in the liquid bleach industry. It says that Section 7 requires a "prediction" of future effects and that the Commission was given the "task of making such predictions." It then concludes that the court of appeals was without power to substitute its own "predictions" for those of the Commission.* Pet., p. 12.

In committing enforcement of Section 7 to the Federal Trade Commission, the Congress did not endow the Commission with any power to make *ad hoc* "predictions" as to violations. It did not authorize determinations based upon hunches or guesswork, or dictated by the predilections of members of the Commission. It plainly intended that the

*Apart from any question of the validity of this statement, the court of appeals here did not "substitute" its own predictions. It merely held that the "predictions" of the second Commission were not supported by substantial evidence.

Commission's authority in this area, just as in other areas in which it functions, be controlled by the Administrative Procedure Act.

This Court has directly said that the Commission's determinations as to the probability of substantial anti-competitive effects have no immunity from review. They must be supported by substantial evidence, whether they be labelled "predictions" or given some other name. Thus, in *Consolidated Foods,* the majority opinion states that the Commission's finding of probability should be honored "*if* there is substantial evidence to support it." 380 U. S. at 600. And in the concurring opinion of Mr. Justice Stewart it is stated:

> "The touchstone of § 7 is the probability that competition will be lessened. But before a court takes the drastic step of ordering divestiture, the evidence must be clear that such a probability exists." 380 U. S. at 605.

and that

> ". . . the record should be clear and convincing that the requisite probability is present."* *Ibid.*

The evaluation by the court of appeals of the substantiality of the evidence, assertedly supporting the Commission's "predictions", was thus clearly within its authorized scope of review. Its rejection of the Commission's "predictions" because they had no evidentiary support furnishes no basis for departing from the principles enunciated in *Universal Camera.* Petitioner's contentions in respect of these "predictions" are nothing more than an effort to induce this Court to entertain another review of the factual record in this proceeding.

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*Certainly there is nothing in the foregoing to justify the Petitioner's citation of the decision in *Consolidated Foods* for the proposition that Commission "predictions" in a Section 7 case are not a proper subject for court review. Pet., p. 12.

(b) The treatment by the court of appeals of the post-acquisition evidence was in accord with principles established by this Court.

Petitioner is critical of the court of appeals for attaching what it says is "great weight" to the post-acquisition evidence. Pet., p. 14. It does not claim that the court should not have considered this evidence. Nor does it claim that the court gave it any conclusive significance. And, in fact, the court expressly disclaimed doing so.

As the Opinion below shows, the court adverted to this evidence in a purely negative way. It merely held that evidence respecting the post-acquisition years did not show that any lessening of competition had occurred. It neither "stressed" the importance of this evidence nor did it give it any "great weight". The decision below was entirely consonant with the principles expressed by this Court in *Consolidated Foods.**

In line with those principles the court of appeals properly held that "the Commission was in error" in according "no weight" to the post-acquisition evidence, and in holding that it was "needlessly" in the record here. Op., p. 34. That error may well be attributable to the fact that the Commission's decision preceded that of this Court in *Consolidated Foods.* But whatever the reason, error it was.

In seeking to minimize the import of this post-acquisition evidence, the Petition omits reference to portions of it which were expressly referred to in the Opinion below. As there noted, it established, without contradiction, that all of the competitors of Clorox, in the years following the acquisition, had substantially increased their business—that these competitors in every such post-acquisition year had sold more bleach for more money than in any year prior to

*The Petitioner's inflated characterizations of the treatment of this evidence by the court of appeals represent an unwarranted effort to compare such treatment with that which was criticized by this Court in *Consolidated Foods.* No such comparison is tenable.

the acquisition. Op., pp. 28, 34. This evidence has obvious relevance in the light of the Commission's conjectures and "predictions" as to a probable lessening of competition.

Certainly this evidence of the improved position of competitors has a direct bearing on the Petitioner's assumptions as to adverse "psychological" reactions which would "deter" their competitive efforts. Pet., pp. 12-13. For it indicates that in the years since the acquisition their competition has been vigorous and successful. And there is no suggestion in the Petition that there was any other evidence showing that in the post-acquisition period there had been any lessening of competition in the industry.

Under the circumstances here, Petitioner's contention that the treatment of the post-acquisition evidence by the court of appeals requires review by this Court is utterly lacking in merit.

(c) The court of appeals did not err in rejecting the Commission's conclusion that the merger eliminated Procter as a potential competitor.

In attempting to give some semblance of validity to the contention that the court of appeals erred in this respect, Petitioner unfortunately has taken liberties with the record and with the decision of the court of appeals.

It states as a fact that "Procter carefully considered entering the liquid bleach industry on its own." Pet., p. 7. As we have said (*supra*, pp. 5-6), the court of appeals found no evidence to support such a claim, or to indicate that Procter had any interest in getting into the liquid bleach business by internal expansion. To the contrary, as noted by the court of appeals, the only evidence bearing on the matter was the recommendation by Procter's promotion department *"against* Procter going into the bleach business on its own."* Op., p. 33.

*This "recommendation" was made as a part of an overall analysis of the financial factors involved in the offer made to Procter by the Clorox stockholders.

Next, the Petition asserts that it was an "indisputable fact" that Procter was "ready, willing and able" to produce liquid bleach itself in competition with Clorox. Pet., p. 16. The only thing about this which is "undisputed" is that there was no evidence, as the court of appeals held, even to suggest that Procter was either a "ready" or a "willing" entrant into the business.* Op., pp. 33, 36.

The absence of any evidentiary support for the Commission's conclusions properly compelled the determination by the court of appeals that "there was no reasonable probability that Procter would have entered the household liquid bleach market but for the merger." Op., p. 36.

In purporting to deal with prior decisions touching upon this "potential competition" issue, the Petitioner has been loose with its citations. The reference to *El Paso* simply highlights the tenuousness of its argument. There, this Court pointed to well-documented efforts on the part of the acquired company to gain access to the market. No doubt existed respecting its intent and desire to compete with El Paso. What is more, the overt activities of the acquired company, in attempting to enter the market, had demonstrably affected competition. They had actually forced the acquiring company to reduce its price in California.

The record in *El Paso* is indeed a far cry from anything here. For there is not even the claim here that Procter had ever threatened to enter the market. Nor does Petitioner point to any evidence that Procter—"standing on the sidelines"—had, in any manner whatsoever, influenced the operations of Clorox or, for that matter, of any other company

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*As to the theoretical question of Procter's "ability" to enter the industry, there is nothing in the Petition suggesting the existence or foreseeability of any reasons why Procter should commit its resources to this business. Respecting this, the Opinion below noted:

> "There is no evidence that it had any such intention. The share of the market it could have captured, whether it could have permanently retained it, and the cost, are matters of conjecture." Op., p. 31.

in the liquid bleach industry. As the Opinion of the court of appeals demonstrates, there is nothing to sustain the Commission's observation that Procter, prior to the acquisition, was "a substantial competitive factor in the liquid bleach market." Comm'n Dec., p. 116.*

Further, in *Penn-Olin*, this Court noted, in remanding the proceeding to the lower court, that findings as to "reasonable probabilities" respecting "potential competition" and the probable effect of the elimination thereof must be made on "evidence in the record on which to base such a finding." 378 U. S. at 175-76. In its review here, the court of appeals determined that there was no such evidence. Op., pp. 33, 36.

Recognizing the infirmities in its claim that Procter was a *likely* entrant, the Petitioner baldly asserts that "to *Clorox*, Procter was, surely, a continuing threat to enter" the industry. Pet., p. 17. It apparently is saying here that the "probability" of Procter's entry is relatively unimportant. It is saying that the important thing is that Clorox would *think* that Procter was a threat to enter, and would shape its policies accordingly.

The first answer to this attenuated speculation is to be found in the Opinion below. Referring to the claim that Procter could be deemed to be on the "brink" of entering the market, and pointing out that this was simply another instance of Commission findings based upon "'treacherous conjecture', possibility, or suspicion," the court of appeals said:

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*Petitioner's citation to *Continental Can* is also inapposite. See Pet., p. 16. The decision there took into account the fact that in certain phases of the container business the acquired and acquiring companies were definitely competitors in respect of promoting the end use of their products. The word "possibility" to which Petitioner refers was used by this Court with reference to the extension of the interchangeability of the products of the competing companies. This Court did not hold that the "mere possibility" of entry can stamp a company as a potential competitor in the Section 7 sense. 378 U. S. at 495-96.

> "An illustration of this is the finding that Procter was on the 'brink' of entering the market on its own. Household liquid bleach is an old product; Procter is an old company. If Procter were on the brink it is surprising that it never lost its balance and fell in during the many years in which such bleach was on the market. It had never threatened to enter the market. *Cf. United States* v. *Penn-Olin Chem. Co., supra,* at 173."* Op., p. 36.

We urge that on the face of the matter, the foregoing circumstances indicate that there would not even be a "rational basis" for any concern by other members of the industry that Procter would move into it on its own.

But there is an additional factor which emphasizes why, on this record, no review by this Court of this "potential competition" point would be justified. This has to do with the circumstances under which this issue was first raised in this case—it was injected as an opportunistic afterthought.

No claim that the acquisition eliminated Procter itself as a potential competitor was asserted in the complaint in this proceeding or advanced during the entire course of the trial proceedings. At no time prior to the close of the record here was there any indication that such a claim would be relied upon. It was raised for the *first* time during the course of a *reargument* before the Commission on respondent's second appeal. Under such circumstances, the Commission's treatment of this issue and the significance at-

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*Nothing is pointed to indicating that any actual or prospective changes had occurred in the household liquid bleach industry which would suggest that Procter's entry into the industry was more likely than it had been in prior years. Unlike the market factors emphasized by this Court in *El Paso* and *Penn-Olin*, there is no showing here that the bleach market was one in which there was a rapidly expanding demand for the product, or in which there were technological breakthroughs or other market developments which could be said to have made entry more attractive. *Cf.* United States v. Penn-Olin Chemical Co., 378 U. S. at 174-75; United States v. El Paso Natural Gas Co., 376 U. S. at 658, 660.

taching to it was to deny to respondent administrative due process in this adversary proceeding.* *Morgan* v. *United States*, 304 U. S. 1, 14-15, 18-19; Section 5(a) of the Administrative Procedure Act, 60 Stat. 239, 5 U. S. C. § 1004(a).

For had any such issue been raised, the respondent would have had the opportunity to prove its invalidity. The Procter officials who had testified in the course of the proceedings would have had the opportunity to deny that there was any likelihood that Procter would go into the business on its own. They would have had the opportunity to demonstrate why it would have been improvident for Procter to do so.

The same observations apply to Petitioner's assertions that Clorox regarded Procter as a likely entrant and that this had an influence upon Clorox's business policies and practices. The principal officials of Clorox testified at length in this proceeding. Had any such issue been raised, they could have been interrogated concerning it. And they would have had the opportunity to brand it as the baseless hypothesis that it is.

This, again, is but another of the extraordinary circumstances of this case. We point to it as further indicating why no review by this Court is in order.

3. The decision below is not in conflict with the decision of the Seventh Circuit in the *Ekco* case.

This brings us to Petitioner's contention that the decision of the court of appeals is in conflict with the decision of the Seventh Circuit in *Ekco Products Co.* v. *Federal*

*The impropriety of the Commission's conduct was raised before the court of appeals, which noted in its Opinion:

> "The Commission urges that the merger eliminated a potential competitor, namely Procter. This issue was never raised until after all the evidence was in and the appeal was taken to the second Commission." Op., pp. 32-33.

Trade Commission, 347 F. 2d 745 (1965). This is simply an effort to buttress an insufficient petition by urging that it raises an issue which comes within the ambit of recognized criteria for the exercise of this Court's jurisdiction. There is no merit to it. For as to the only principle of law involved, the two circuits are in complete accord.

In *Ekco*, the Commission had found that the acquisitions there involved violated Section 7. The Seventh Circuit held that there was adequate evidentiary support for the Commission's decision. It expressly premised its judgment upon a combination of particular circumstances reflected in the record in that case. Included among these was the fact that the merger made possible, and resulted in, the acquisition by the acquired company of a competitor of that company. Such acquisition was concededly a violation of Section 7. Moreover, it served to entrench further the virtual monopoly position which the acquired company had in its product line.

The decision of the Seventh Circuit makes it clear that it was the combination of this and other circumstances —including evidence respecting the acquiring company as a "potential competitor"—which led to its conclusion that Section 7 had been violated. The court confined its holding to the "narrow factual situation" which was before it. 347 F. 2d at 751. It expressly said: ". . . we limit this holding to the facts of this case." 347 F. 2d at 753. Its decision represents no precedent of general application.

The true nature of the decision in *Ekco* and the plain limitations which the Seventh Circuit placed upon it are wholly ignored in the Petition. What Petitioner has done here is to single out one of the factors responsible for the decision—the one relating to "potential competition". Then, as to this lone issue, it urges that the decision below is irreconcilable.

But even if the decision in *Ekco* were confined to this point of "potential competition", there still would be no conflict between the circuits. For, both decisions hold that before there can be a finding that an acquiring company is a "potential competitor", there must be evidence establishing a "reasonable probability" that it would enter the business on its own.

Here, unlike *Ekco,* the court of appeals determined that there was nothing to support the speculation that Procter would enter the liquid bleach business by internal expansion. The court of appeals was fully aware of the *Ekco* decision and directly referred to it. It expressly negatived any inference that the decision here ran counter to that of the Seventh Circuit, noting:

> "The facts were different in *Ekco* and the court very carefully limited the decision to the facts of that case." Op., p. 35.

Two decisions which are completely in accord in respect of controlling principles of law cannot be said to be in "conflict" where they deal with different factual circumstances. See the opinion of this Court in *Wisconsin Electric Co.* v. *Dumore Co.,* 282 U. S. 813:

> "It appearing that the asserted conflict in decisions arises from differences in states of fact, and not in the application of a principle of law, the writ of certiorari is dismissed as improvidently granted."

Thus we submit that here there is no "real and embarrassing conflict of opinion and authority between the circuit courts of appeal."* Petitioner's argumentation respecting this asserted "conflict" is without substance. In no respect does it warrant review by this Court.

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*Layne & Bowler Corp. v. Western Well Works, Inc., 261 U. S. 387, 393.

4. The denial of the Writ will not prejudice the Government's enforcement of Section 7.

Lastly, the Petitioner, in seeking to induce this Court to grant certiorari, has resorted to exaggerated characterizations of the "importance" of this case. These range from statements describing this as a "pilot case of major significance" to the preposterous prophecy that the effect of the decision below would be to *"foreclose all* effective enforcement action against conglomerate mergers." Pet., pp. 11-12, 18.

These are palpable overstatements. For the decision below represents nothing which would foreclose or hamper any proper enforcement activities of the Commission. It recognizes that conglomerate mergers are proscribed by Section 7 when a finding of illegality is supported by substantial evidence, as it was in *Consolidated Foods* and *Ekco.* The only "standard" to which Petitioner can fairly say it has been held by the decision here is that it cannot premise its decisions solely upon conjecture and speculation.*

We repeat, the decision below is limited to the facts and circumstances reflected in this record. It is the Petitioner's studied refusal to recognize this which underlies its magnification of the significance of this case.

We further note that the Petition artfully seeks to avoid the impression that it is urging this Court to enunciate some *per se* rule applicable to conglomerate mergers. It says:

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*In line with other exaggerated assertions as to the importance of this case is the claim that "the decision below casts a serious cloud over a major law enforcement program" of the Commission in attacking conglomerate mergers. Pet., p. 10. References are made to extra-record statistics as to the number of conglomerate mergers in the last four years, as well as to "plans" of the Commission to attack them. Pet., pp. 10-11. Whatever these "plans" may embrace, Commission policy cannot extend its enforcement function beyond the bounds fixed by law.

> "The Commission did not suggest in its opinion—and we do not suggest here—that all such mergers are within the ban of Section 7." Pet., p. 8.

and again:

> "Of course, not all—or even most—such mergers are harmful to competition." Pet., p. 10.

But when Petitioner argues that the "substitution" of Procter for Clorox, without more, "justified the Commission's prediction that in the long run competition is likely to suffer substantially" (Pet., pp. 14-15), it belies its own protestations. For all of the statements in the Petition as to why such "substitution" would warrant the Commission's assumptions simply relate to hypothetical effects associated with the "size" of Procter. Thus, Petitioner, despite its disavowals, seeks to secure in this proceeding the equivalent of a "rule of thumb" of general application that size alone can be determinative in a Section 7 case.

The court of appeals dealt with this concept and rejected it as a decisive factor on this record. It said:

> "We do not believe these tests [of legality] should involve application of a per se rule.
>
> "The Supreme Court has not ruled that bigness is unlawful, or that a large company may not merge with a smaller one in a different market field. Yet the size of Procter and its legitimate, successful operations in related fields pervades the entire opinion of the Commission, and seems to be the motivating factor which influenced the Commission to rule that the acquisition was illegal." Op., p. 37.

The true thrust of the Petition is to have this Court immunize the Commission from compliance with the stand-

ards of the Administrative Procedure Act and the rulings of this Court. It is seeking a mandate from this Court to dispense with the requirement that the link between the merger and its probable effect on competition be established by substantial evidence. It thus is espousing some rule of law which runs counter to this Court's decision in *Consolidated Foods,* 380 U. S. at 604, and to the decision of the Seventh Circuit in *Ekco,* 347 F. 2d at 751. No valid reasons are advanced why this Court should entertain any review of this case to consider contentions which are at odds with well grounded legal principles.

Particularly is this so here where the court of appeals has determined that the very "assumptions"—which Petitioner urges were justified by the mere "substitution" of Procter for Clorox—have been negatived by the evidence in this record. For, in its consideration of the evidence, the court of appeals dealt with each of the assumed advantages and each of the assumed adverse effects which Petitioner claims would stem from the size of Procter. See Pet., pp. 5-6. As to these, it determined that the Commission's assumptions were not supported by substantial evidence. Op., pp. 27-30. And, as further reflecting on the validity of these assumptions, was the circumstance that in the years following the acquisition the court of appeals found no proof that any anti-competitive effects resulted from the merger. Op., pp. 31-34. The import of the court's determination cannot be obscured by Petitioner's attempt to divorce the decision below from the record.

Thus, when the Petitioner says that review by this Court is necessary to provide the Government with "adequate legal tools" (Pet., p. 10) to deal with conglomerate mergers, it has simply closed its eyes to the realities of this case. The Commission did not lose here because of any inadequacy of its "tools". It lost because of the "inadequacy" of evidentiary support for charges which it was the Commission's burden to sustain.

CONCLUSION

Paraphrasing the Opinion of the court of appeals, this protracted litigation which is now entering its tenth year should come to a close. We respectfully submit that the Petition should be denied.

Respectfully submitted,

KENNETH C. ROYALL,
FREDERICK W. R. PRIDE,
ROBERT D. LARSEN,
200 Park Avenue,
New York, N. Y. 10017.
Attorneys for Petitioner, The Procter & Gamble Company.

RICHARD W. BARRETT,
DINSMORE, SHOHL, BARRETT,
COATES & DEUPREE,
12th Floor Central Trust Tower,
Cincinnati, Ohio 45202.

ROYALL, KOEGEL, HARRIS & CASKEY,
1730 K Street, N. W.,
Washington, D. C. 20006.
Of Counsel.

Dated: September 1966.

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 342

FEDERAL TRADE COMMISSION, PETITIONER

v.

THE PROCTER & GAMBLE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINIONS BELOW

The opinion of the court of appeals (R. 1555–1572)[1] is reported at 358 F. 2d 74. The opinion and final order of the Federal Trade Commission (R. 388a–465a) are reported at CCH Trade Reg. Rep. (FTC

[1] The record consists of the four-volume joint appendix below, plus the opinion and judgment of the court of appeals and this Court's orders extending the time for filing a petition for a writ of certiorari, and allowing certiorari. These additional documents are printed at the end of volume II as pp. 1555–1577. We cite them as, *e.g.*, R. 1570. Volumes I and II also contain the pleadings, testimony, and Commission orders and opinions. We cite them as, *e.g.*, R. 11a. Volumes III and IV contain the exhibits and *in camera* exhibits, respectively. We cite them by exhibit number and page: *e.g.*, CX (Commission exhibit) 6, R. 4x; CX 342, R. 423x, *in camera*.

Transfer Binder 1963–1965), ¶16,673, but are not yet officially reported. The hearing examiner's opinion (287a–372a) is not reported. The previous opinion of the Commission in this case (R. 249a–255a) is reported at 58 F.T.C. 1203; the previous opinion of the hearing examiner (R. 176a–246a) is not reported.

JURISDICTION

The judgment of the court of appeals (R. 1573) was entered on March 18, 1966. On June 14, 1966, Mr. Justice Stewart extended the time within which to file a petition for a writ of certiorari to July 15, 1966 (R. 1574). The petition was filed on July 13, 1966, and granted on October 17, 1966 (R. 1574; 385 U.S. 897). The jurisdiction of this Court rests on Section 11(c) of the Clayton Act, 15 U.S.C. 21(c), and 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Federal Trade Commission correctly held that the acquisition of the nation's dominant liquid bleach producer by the nation's leading manufacturer of household products closely related to bleach was unlawful under Section 7 of the Clayton Act.

STATUTE INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 15 U.S.C. 18, provides in pertinent part:

> No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the

whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly.

STATEMENT

On October 7, 1957, the Federal Trade Commission issued a complaint (R. 15a) charging that on or about August 1, 1957, The Procter & Gamble Company ("Procter") had acquired the assets of Clorox Chemical Company ("Clorox") in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 (R. 20a–21a). Following evidentiary hearings, the hearing examiner, on June 17, 1960, rendered a decision (R. 179a) in which he found the acquisition unlawful and ordered divestiture (R. 242a–246a). On appeal, the Commission, on June 15, 1961, reversed (R. 249a–255a, 58 F.T.C. 1203), holding that the record as then constituted was inadequate, and remanding the case to the examiner for additional evidentiary hearings. These were held, and on February 28, 1962, the examiner rendered his second decision (R. 287a), in which he again held the acquisition unlawful and ordered divestiture (R. 367a–372a). Procter again appealed, and the Commission, in a lengthy opinion (R. 391a–465a), affirmed the examiner and entered a final order of divestiture (R. 388a–391a). The United States Court of Appeals for the Sixth Circuit reversed and directed that the Commission's complaint be dismissed (R. 1555, 358 F. 2d 74).

I

THE FACTS

A. CLOROX—THE ACQUIRED COMPANY

At the time of its acquisition by Procter (1957), Clorox was engaged almost exclusively in the manufacture and sale of liquid bleach for household use (R. 20a, 32a). In the year before the merger, its sales were almost $40 million and the book value of its assets more than $12 million (CX 12, R. 15x–16x; CX 27, R. 91x). It had liquid assets of almost $4 million and an earned surplus of more than $7 million (CX 12, R. 13x–16x). With thirteen plants located throughout the United States (R. 21a, 33a), Clorox was the only nation-wide seller of the product (R. 520a–521a, 730a). In the six years preceding the acquisition, Clorox's sales had increased 69 percent and its profits 104 percent (R. 301a). By the year of the merger Clorox accounted for almost 50 percent of the nation's total annual sales of household liquid bleach. In some regions, its share was even higher. For example, it had 72 percent of all sales in the Middle Atlantic States. (CX 325, R. 154x.)

B. THE HOUSEHOLD LIQUID BLEACH INDUSTRY

1. The product and its manufacture

Liquid bleach is used in the home principally as a whitener in the cleaning of clothes and fabrics, though also as a germicide and disinfectant. With immaterial exceptions, all brands of household liquid bleach are a chemically identical 5¼ percent sodium

hypochlorite solution (R. 520a).[2] It is conceded that household liquid bleach is the relevant line of commerce, or product market, in this case.[3]

Household liquid bleach is easily manufactured, either by adding water to bleach concentrate or by first combining the basic chemicals (chlorine and caustic soda) to make sodium hypochlorite (R. 1171a–1172a). No manufacturer has a patent on the product or its manufacture (R. 1173a). Necessary information relating to manufacturing methods and processes is published by large chemical companies who produce the basic raw materials (R. 1181a) and is available to anyone who is either in the industry or interested in entering it. The machinery and equip-

[1] An officer of respondent testified (R. 1188a) that Clorox bleach is made with great care. The record also contains testimony by competing bleach manufacturers that they likewise take great care in turning out a high-quality product and that their bleaches are equal in quality to Clorox bleaches (R. 727a–728a, 772a, 839a–840a, 920a–921a, 970a, 1012a, 1348a–1349). Procter's president observed that while a household product such as liquid bleach has to be of acceptable quality, it is not simply quality "as you might define it in a laboratory—but it is quality * * * [a]s the public thinks of it" (R. 528a).

[3] Liquid bleach in somewhat stronger solution is used for industrial purposes; it does not compete with household liquid bleach (R. 768a, 773a). Powdered bleaches compete to some extent with household liquid bleach, but are generally limited to fine fabrics, and are more costly than liquid bleaches (CX 323B, R. 148x; R. 1027a–1028a, 1090a). Thus—all agree—household liquid bleach is sufficiently distinct to constitute a separate product market for Section 7 purposes. Throughout, we use "bleach" to refer to household liquid bleach.

ment required for a plant of efficient capacity are available at reasonable cost (R. 396a, 1181a–1182a) and there is no shortage of raw materials; they are readily obtainable in all parts of the country (R. 1179a–1180a).

2. The industry's structure

While technology would thus appear to be consistent with an industry consisting of a large number of bleach manufacturers of comparable size and strength, in fact the sales of the industry are heavily concentrated in a few leading firms. At the time of its acquisition by Procter, Clorox alone, as noted, accounted for approximately 50 percent of all bleach sales in the nation. The two largest firms accounted for about 65 percent, and the six largest for about 80 percent.[4] The remaining sales were scattered among more than 200 other producers, most of them very small (R. 396a; CX 696A–J, R. 282x–289x). Many of

[4] The respective national shares of the six major manufacturers of bleach were as follows (CX 325, R. 154x; RX (respondent's exhibit) 112F, R. 375x; R. 822a, 851a, 1050a, 1492a):

Brand	Manufacturer	Percentage of total U.S. sales
Clorox	Clorox Company	48.8
Purex	Purex Corporation, Ltd	15.7
Roman Cleanser	Roman Cleanser Company	5.9
Fleecy White	John Puhl Products Company	4.0
Hilex	Hilex Company	3.3
Linco	Linco Products Corporation	2.1
All other brands		20.2
		100.0

these are so-called "garage" or "down cellar" bleach producers whose sales are inconsequential (R. 396a, 860a–861a, 968a, 984a, 1269a); the others manufacture house brands for grocery stores and supermarkets (R. 1317a). Only eight liquid bleach manufacturers have assets of more than $1 million; very few have assets of more than $75,000 (CX 696A–J, R. 282x–289x).

Concentration is even greater on a local or regional, than it is on a national, basis. Liquid bleach is quite heavy in relation to its unit price, and therefore relatively expensive to ship; freight averages 10 percent of cost (R. 724a; CX 437, R. 177x). And since it is uniformly sold on a delivered-price basis, the manufacturer always absorbs the cost of transportation (R. 626a, 738a, 874a, 895a, 909a, 922a, 957a, 1028a, 1065a, 1089a). For these reasons, it is generally not economical for a manufacturer to sell beyond a radius of about 300 miles from his plant (R. 397a). Only Clorox has enough plants spread throughout the country to be able to sell nationally, most manufacturers being far more limited in their selling area. Even Purex, the second-ranking seller, and a relatively large and diversified firm (R. 722a–723a), distributed its bleach in only one-half of the nation (R. 725a).

The result is that the sales share of the leading producers (including Clorox) is much larger in particular areas than their national shares might suggest, for in no region do all of them sell. Thus, for example, at the time of the merger Clorox and two other firms had 97.8 percent of all bleach sales in the Metropolitan Chicago area; Clorox and one other firm

had 88 percent of the Southwestern region; and Clorox and one other firm had 81.6 percent of the Pacific market (CX 325, R. 154x). As noted (p. 4, *supra*), Clorox alone accounted for almost 72 percent of all sales in the Middle Atlantic States.[5]

3. The marketing of household liquid bleach

Shelf display, and brand advertising and sales promotions,[6] are the twin keys to the successful marketing of bleach (R. 398a). Shelf space is limited and is allocated by the retailer among brands of the same product according to the demand that each manufacturer has succeeded in generating for his brand (R. 733a, 1199a, 1295a, 1302a).[7] Numerous witnesses testified to the critical importance of advertising and

[5] These figures are drawn from the Nielsen Food Index, and their accuracy is stipulated (R. 820a–821a). The dominant position of Clorox in the various regions is confirmed by the testimony of other bleach manufacturers (R. 730a, 825a, 848a, 875a, 881a, 907a, 939a, 961a, 971a, 1065a). No attempt was made by the Commission or by the respondent to delineate or to analyze in detail the local or regional areas in which bleach manufacturers in fact compete. In the circumstances the Commission used aggregate national figures as approximations of conditions obtaining in the several regional markets, suggesting that, due to the limitations imposed by freight costs, and the wide dispersal of Clorox's plants, Clorox's actual market power was greater than the national figures suggested (R. 430a–431a). A summary of the sales shares of the principal bleach manufacturers in each region is contained in an appendix to the court of appeals' opinion (R. 1570), reproduced below at p. 36, n. 31.

[6] By "sales promotions" we mean special offers, contests, and similar marketing devices.

[7] While there are some 200 bleach manufacturers—and even more brands (CX 696A–F, R. 282x–287x; RX 112A–U; R. 370x–390x)—supermarkets generally stock only two to four brands. These will generally be Clorox bleach (the only na-

promotional efforts by the manufacturer in order to create sufficient demand for his brand to entitle it to shelf space (R. 569a, 832a, 847a–848a, 873a–874a, 937a, 961a, 988a–989a, 992a, 1008a, 1025a–1026a, 1066a, 1200a). In summarizing the importance of such efforts, an official of a large retail grocery chain said (R. 1302a): "Today we don't sell groceries any more; they are all bought from us."

Liquid bleach is thus a product heavily "presold" by the manufacturer to the public through advertising and promotions (R. 569a, 832a, 847a–848a, 873a–874a, 937a, 961a, 988a–989a, 992a, 1200a). In its last full year of independent operation, Clorox spent more than $3.7 million—or approximately 10 percent of net sales—for newspaper, magazine, radio, billboard and television advertising and an additional $1,738,000 for other promotional activities (R. 398a–399a; RX 83, R. 453x, *in camera*).[8] The Commission found (R. 398a) that these heavy expenditures go far to explain why Clorox maintained so high a market share despite the fact (1) that its brand, though chemically indistinguishable from rival brands (R. 1423a; see, also, pp. 4–5 and n. 2, *supra*), retailed for a price equal to or, in many instances, higher than its competitors' (R. 731a, 771a, 811a–812a, 816–817a,

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tional brand), one or two regional or local brands, and, in some instances, a private (store) brand (R. 734a, 848a, 875a–876a, 905a, 921a, 937a, 967a, 971a, 984a, 986a, 1012a, 1027a, 1265a, 1287–1288a, 1293a, 1345a–1347a, 1510a, 1514a; CX 710A–B, R. 316x–317x).

[8] Its leading competitor, Purex, spent $3 million to advertise its products in 1957 (CX 447, R. 188x). Unlike Clorox, it had other products besides liquid bleach which its advertising budget covered (R. 722a–723a, 725a–726a; CX 438, R. 184x–185x).

859a–860a, 878a–879a, 904a–905a, 938a, 962a, 1009a, 1015a, 1028a–1029a, 1068a–1069a, 1091a, 1109a), and (2) that Clorox apparently enjoyed no substantial advantages in cost of production vis-à-vis other bleach producers (see pp. 5–6, *supra*).[9]

C. PROCTER—THE ACQUIRING COMPANY

1. The company and its products

Procter is a large, diversified manufacturer of low-price, rapid-turnover household products.[10] In 1957 its sales were in excess of $1.1 billion (R. 400a), from which it realized profits of more than $67 million (CX 6, R. 7x). Before acquiring Clorox, Procter had never manufactured or sold household liquid bleach.

Between 1946 and 1962, Procter's net sales increased approximately 400 percent, and its assets even more, reflecting in significant part its rapid diversification into new products closely related to its existing lines. For example, during this period it developed and successfully introduced a new detergent, a new deodorant

[9] The vital role of advertising in the marketing of bleach is illustrated by the experience of the Roman Cleanser Company in selling the same bleach under two different brand names in the same market (R. 1052a): the advertised brand sold at a consistently higher price (R. 1068a–1069a).

[10] Among the more important products sold by Procter at the time of the merger were Ivory Soap, Ivory Flakes, Ivory Snow, Camay, Lava (soaps); Cascade and Duz (detergents); Tide, Cheer, Dreft, Oxydol, Dash, and Joy (detergents); Comet (scouring cleanser); Spic and Span linoleum cleaner, Zest detergent toilet bar, Crisco shortening, Golden Fluffo shortening, Big Top peanut butter and peanuts, Duncan Hines baking mixes, Crest toothpaste, Gleem toothpaste, Drene shampoo, Prell shampoo, Lilt and Pin-it home permanents, and Charmin facial tissue, paper napkins, and paper towels (R. 29a–30a).

toilet soap bar, two new brands of toothpaste, and an abrasive cleanser (R. 23a, 35a; CX 6, R. 11x; CX 14, R. 18x)—all (along with several brands Procter obtained by acquiring their producers) "low priced, rapid turn-over, household items sold primarily through grocery, drug and department stores—the type of goods which [Procter] is accustomed to market." (CX 6, R. 11x; CX 348B, R. 158x; R. 299a).

By 1957 Procter was among the nation's 50 largest manufacturing corporations, and its annual sales of soaps, detergents and cleansers alone (products whose end use is closely related to that of bleach, see p. —, *infra*) were more than $500 million (R. 400a–401a). Procter was the largest seller of these products. For example, it accounted for 54.5 percent of all packaged detergent sales and, together with Colgate-Palmolive and Lever Brothers, for 80 percent of this $760 million market (R. 401a).[11] There were no other firms in the industry of comparable size, fourth place being occupied by the Purex Corporation with total sales of only $50 million—5 percent of Procter's (CX 438, R. 179x).

2. Procter's marketing methods

As noted, Procter's principal products were low-price, high-turnover items marketed chiefly to housewives—products which manufacturers seek to "pre-sell" to the consumer by means of advertising and sales promotion (see pp. 8–9, *supra*). Indeed, in 1957 Procter was the largest advertiser in the United

[11] Procter is larger than either of its principal competitors. In 1957 Colgate-Palmolive's total sales were $291 million and Lever Brothers' $250 million (R. 401a, 598a; CX 529, R. 199x).

States, spending more than $80 million on advertising and an additional $47 million for promotions (R. 401a, 1133a; CX 447, R. 188x; CX 342, R. 423x, *in camera*).[12] The principal aspects of Procter's marketing techniques are the following.

Advertising Discounts. Procter receives substantial discounts from the advertising media. It is in television advertising, apparently, that the greatest discounts are available to the large advertiser, and it is in television that Procter concentrated the bulk of its advertising efforts. On the NBC television network, Procter was entitled to a discount of 30 percent for daytime and 25 percent for nighttime purchases; and on the CBS television network, it was entitled to a discount of 25 percent (R. 778a, 1139a).[13] In contrast, Purex Corporation's network television advertising

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[12] Procter's principal competitors in the sale of such products are also leading advertisers. In 1957 Colgate-Palmolive spent almost $37 million, and Lever Brothers approximately $23.5 million, for advertising (CX 447, R. 188x).

[13] Network rate structures are in fact somewhat more complex than the record of this case indicates. See Blake and Blum, *Network Television Rate Practices: A Case Study in the Failure of Social Control of Price Discrimination*, 74 Yale L.J. 1339, 1347–1362. Professor Blake testified before the Senate Antitrust and Monopoly Subcommittee that discounts to the largest advertisers could run as high as 75 percent. Gerald Arthur, a former advertising executive and owner of radio and television properties, testified that the largest advertisers, such as General Foods, obtain television advertising at a cost of $2.50 per thousand households, whereas a smaller advertiser would have to pay $3.50 to $4—40 to 60 percent more, in other words—for the identical coverage. Federal Trade Commission Report, Technical Study No. 8, National Commission on Food Marketing, June 1966, *The Structure of Food Manufacturing*, p. 70.

expenditures of $1.4 million entitled it to only a 6 percent discount (R. 779a; see, also, R. 780a). Clorox received no discounts of any substance (R. 434a, 699a, 1126a–1127a).

Similar discounts were available to the large purchaser of magazine and newspaper advertising. To qualify for the 17 percent discount offered by *Life* magazine, an advertiser had to make purchases of about $2 million in any 12-month period, and *Ladies Home Journal* and *Better Homes and Gardens* offered a 12 percent discount on purchases of about $1 million (R. 780a–781a, 818a). At the time of the acquisition, Procter spent about $9 million for magazine advertising, and thus could easily qualify for these discounts (CX 447, R. 188x). Clorox and Purex could not (R. 781a–782a, 1123a, 1130a). Procter's budget for newspaper advertising also qualified it for substantial discounts (R. 691a–692a).

Sales Promotions. Promotions play a significant role, often in conjunction with advertising, in the marketing of Procter's products. Among the promotions regularly employed in the sale of household cleansing agents are contests, reduced price on the second package with purchase of the first package at regular price, and mail offers of premiums, coupons, and free samples (R. 323a–324a, 542a, 544a–545a; CX 18, R. 31x–32x). A contest in 1956 involving Tide, Joy, Camay, Oxydol, and Ivory Snow offered $100,000 in prizes plus $5,000 in bonus prizes, and was tied in with a coupon mailing to the home (CX 111A–I, R. 117x–125x; R. 504a); and a 1957 "Wife Saver" sale and contest involving Oxydol, Camay, Ivory bar soap, Joy, and Spic and Span,

offering $60,000 in prizes plus a $2,500 bonus prize, was tied in with a price reduction of 7 cents off on the sponsoring brands, all supported by television and newspaper advertising (CX 279A–O, R. 137x–142x; CX 420, R. 171x).[14] Procter, as noted, spent a total of $47 million on such promotions during the year preceding the acquisition. Procter states in its salesman manual (CX 18, R. 32x): "Advertising creates an acceptance for our products, and promotions increase the incentive [of the consumer] to buy."

Multi-Product Advertising and Promotions. As a producer of many products, Procter derives considerable advantages in advertising and sales promotion that are denied a single-product firm. Thus, it can—and does—feature joint promotions for several of its products, thereby reducing the mailing, printing and other costs of the promotion for each product (CX 111A–J, R. 117x–125x; CX 279A–O, R. 137x–142x). It can—

[14] Procter also maintained a special Appliance Trade Sales Department, the function of which was to secure at both the manufacturing and distributing levels of the appliance industry the endorsement and merchandising support of Procter products used in washing machines and dishwashers (CX 17, R. 21x). There were once contracts between Procter and the washing-machine companies providing for the payment by Procter of one dollar for each home demonstration using a Procter product (R. 574a–577a). In addition, Procter secured the endorsement by the principal washing-machine manufacturers of its detergent, "Tide", and the withdrawal of their endorsement of a competing product, "All", formerly manufactured by Monsanto Chemical, and subsequently purchased by Lever Brothers (R. 576a; see p. 43, n. 36, *infra*). The Federal Trade Commission challenged Procter's exclusive arrangements and a consent order banning them was issued. *Procter & Gamble Co.*, 56 F.T.C. 1623.

and does—purchase network programs on behalf of several products. This enables it to give each product network exposure at a fraction of the cost per product that a firm with only one product to advertise would incur (R. 552a–553a, 1139a; CX 575, 225x). By the same token, Procter can advertise a product on several programs for the same price per product that a single-product firm would have to pay for single-program coverage. In addition, a multi-product network advertiser can run commercials for different products in different sections of the country during a single commercial break, thereby selectively concentrating its advertising where it is most needed (R. 1494a).

Sales Force. Procter's marketing efforts are backed by a well-trained force of approximately 1,800 salesmen (R. 609a; CX 18, R. 27x). Their principal task is to procure and retain "adequate" shelf space for Procter's products in the self-service supermarkets—"adequate" shelf space being defined by Procter as space proportional to Procter's market share (R. 531a–532a, 572a; CX 18, R. 54x–55x, 64x–69x; CX 21A–B, R. 83x–90x). Procter also stressed to its salesmen (CX 18, R. 54x–55x): "What [the housewife] finds in the store with respect to the display of our brands and the shelf space and position they occupy will greatly influence her buying." Toward this end Procter's salesmen were instructed to realign the shelves whenever possible, so as to group Procter's products into departments (*e.g.*, package-soap department, liquid-soap department), and, within each de-

partment, to group all sizes of Procter's brands together (CX 21A–B, R. 83x–90x).[15]

3. Procter's marketing philosophy in action

An illustration of the effectiveness of Procter's marketing organization was the introduction in 1957 of its abrasive cleanser, Comet. At the time Procter entered the abrasive cleanser market, Ajax, the abrasive cleanser manufactured by Colgate-Palmolive, accounted for roughly 56 percent of the nation's sales (R. 559a; CX 571A, R. 217x).[16]

Procter launched Comet with a nation-wide campaign of advertising and promotions, featuring extensive coverage by television and newspaper media and widespread distribution of free samples and coupons offering one regular-size Comet free with the purchase of another regular or giant size (R. 560a–561a; CX 153A–G, R. 127x–134x; CX 573E, R. 446x, *in camera*). In the course of a 22-month period, Procter spent $7.2 million for these and similar advertising and promotional activities (CX 573E, R. 446x, *in camera*), and achieved for Comet a 36.5 percent share of the national market.[17]

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[15] Clorox, utilizing a network of 80 independent brokers, sought to secure services similar to those performed by Procter salesmen (R. 524a–525a, 1233a–1236a). After the acquisition, Procter continued Clorox's method of selling through brokers (R. 524a–525a, 608a).

[16] The other leading brands were Bab-O, manufactured by B. T. Babbitt, Inc., which had 24 percent of the market, and Blue Dutch, manufactured by Purex, which had 10 percent (CX 438, R. 182x; CX 534, R. 208x; CX 571A, R. 217x).

[17] Procter stressed Comet's green color, pine odor, and the presence of bleach (CX 153A–G, R. 128x–131x). The presence of bleach was not in fact novel; Blue Dutch (Old Dutch cleans-

D. THE ACQUISITION

Procter in 1957 was in the process of diversifying into product lines related to its basic detergent-soap-cleanser business (pp. 10–11, *supra*). Liquid bleach represented a natural avenue for such diversification. Packaged detergents—Procter's most important product line—and household liquid bleach are used together, not only in the washing of clothes and fabrics, but also in general household cleaning, liquid bleach being a disinfectant as well as a whitener. Thus, from the consumer's point of view, packaged detergents and liquid bleach are closely related items. Household cleansing agents are also related to liquid bleach by the mode of distribution, both being low-price, rapid-turnover consumer lines marketed through self-service stores and presold by the manufacturer by means of mass advertising and sales promotions. In fact, cleansing agents and bleach are often displayed as a group on the same or adjacent shelves (R. 733a, 909a, 970a, 1014a, 1032a, 1093a).[18]

The acquisition of Clorox was the culmination of at least two years of study of the liquid-bleach industry by Procter's promotion department in order to

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er) contained bleach (R. 765a; CX 438, R. 182x). The Comet campaign is also described in Klaw, "The Soap Wars: A Strategic Analysis," *Fortune*, June 1963, pp. 122–198, based largely on the record in *United States* v. *Lever Brothers Co.*, 216 F. Supp. 887 (S.D. N.Y.).

[18] The close relationship of Procter's and Clorox's business extends beyond Procter's cleansing agents, since its other products—food, paper, and toilet articles—are also low-price, high-turnover household goods sold through self-service stores and heavily advertised and promoted (R. 28a, 406a, 525a; CX 6, R. 11x).

determine the desirability of its entry into the industry (CX 323A–C, R. 147x–149x; CX 324A–D, R. 150x–153x). In October 1955, a memorandum from Procter's promotion department recommended against entry by Procter on its own on the ground that even a $20-million investment (exclusive of plant and equipment) might not be enough to obtain a "satisfactory" market share (defined as 32 percent), and that it would take five years for the investment to "pay out" (CX 324A–B, R. 150x–151x).

The memorandum did, however, recommend that Procter consider entering the liquid-bleach market by acquiring Clorox if this could be done at a reasonable price, which the memorandum suggested as $20 million payable in Procter stock (CX 324A–B, R. 150x–151x; R. 581a). The promotion department stated that liquid bleach accounted for 90 percent of the large and expanding household bleach market and that its ascendancy over powdered bleach would continue in the foreseeable future. It pointed out (CX 324B, R. 151x):

> Taking over the Clorox business could be a way of achieving a dominant position in the liquid bleach market quickly which would pay out reasonably well.

A subsequent report from Procter's promotion department, dated February 1957,[19] recommended that Procter pay if necessary $30 million for Clorox (CX 323A–C, R. 147x). The report repeated the obser-

[19] In the interim Clorox and Proctor had negotiated unsuccessfully over acquisition, being unable to agree on a price (R. 650a–652a).

vations in the first report concerning the desirability of entry, and also noted (CX 323A–C, R. 149x):

> We are advised that Clorox spent $2,600,000 in the last half of 1956 for advertising, or at the rate of $5,320,000 per year. We believe that P & G advertising philosophies and economies applied to an advertising expenditure of this size can be expected to further advance the Clorox business.

In May 1957, a few months after this report was submitted, Procter entered into a contract for the acquisition of Clorox. The acquisition was consummated in August by the transfer of all of Clorox's assets to a newly organized, wholly owned Procter subsidiary. Shareholders of Clorox received shares of Procter common stock having a market value of approximately $30.3 million (CX 12, R. 15x; CX 27, R. 91x; CX 702, R. 296x). Mr. Morgens, then Procter's executive vice president, stated (CX 413A–B, R. 167x–168x):

> While this is a completely new business for us * * * we are thoroughly at home in the field of manufacturing and marketing low price, rapid turn-over consumer products.

E. POST-ACQUISITION DEVELOPMENTS

Between the merger and the close of the record in 1961, Clorox's market share continued to increase. In 1957, Clorox's market share was 48.4 percent; four years later, it was 51.9 percent (RX 135B, R. 402x). In the New England region, its share rose from 56 to 67.5 percent in this period (R. 314a, 462a).

The operation of Clorox remained, in most respects, substantially unchanged. But there was at least one

significant change. Prior to the merger Clorox was not using promotional devices such as premiums, coupons, price-off labels, contests, tie-ins to other products, or free products (R. 663a, 670a–672a, 714a–715a). In the four years following the acquisition, Procter expended $2 million on such devices for the promotion of Clorox (see R. 462a; CX 336, R. 156x; CX 718A–F, R. 447x–453x, *in camera*).

The following example illustrates the effectiveness of such promotions. In October 1957, Purex selected Erie, Pennsylvania—where it had not sold previously—as an area in which to test the salability, under competitive conditions, of a new bottle and an allegedly "improved" liquid bleach (R. 741a, 753a; CX 454A–C, R. 191x–193x). The two leading brands in Erie at the time of this test were Clorox, with 52 percent and the "101" brand sold by the Gardiner Manufacturing Company, with 29 percent of the market (CX 450, R. 189x; R. 1002a). To attain broad distribution in a short period of time, Purex launched an intensive newspaper and television advertising campaign and mailed coupons to all homes in the area, offering introductory price reductions (R. 744a; CX 450, R. 189x). In five months Purex captured 33 percent of the Erie market; Clorox's share dropped to 35 percent and 101's to 17 percent (CX 450, R. 189x).

Clorox responded by offering its bleach at reduced prices printed on the label of the bottle (CX 336, R. 156x; CX 450, R. 189x; R. 595a–596a, 1238a). Subsequently, Clorox added an offer of a $1-value ironing board cover for 50 cents with each purchase of Clorox

at the reduced price (CX 429A–B, R. 175x–176x; CX 450, R. 189x). It also supplemented its regular newspaper and magazine advertising with a substantial number of TV spots (CX 429A–B, R. 175x–176x; CX 450, R. 189x; CX 538B, R. 215x). The result of these activities was to restore Clorox's lost market share and, indeed, to increase it slightly (CX 450, R. 189x). Purex's share fell to 7 percent.[20] Purex's president testified that the effect of Clorox's vigorous response was to cancel out Purex's test and make impossible any evaluation of its new container and (allegedly) improved product (R. 785a).[21]

Since the merger Purex has acquired the fourth largest producer of bleach, John Puhl Products Company, which owned and marketed the "Fleecy White" brand in geographic markets which Purex was anxious to enter. One of the reasons for this acquisition, according to Purex's president, was that (R. 1492a–1493a):

> Purex had been unsuccessful in expanding its market position geographically on Purex liquid

[20] The 101 brand, whose manufacturer did not counter the promotional or advertising measures of Clorox or Purex, lost sales to both (CX 450, R. 189x). It apparently lacked the financial resources to engage in this kind of activity (R. 1008a, 1020a).

[21] Activities similar to those engaged in here are characterized in the trade as "muddying the test waters". Klaw, "The Soap Wars: A Strategic Analysis," *Fortune*, June 1963, pp. 122, 186. A number of other bleach producers testified to their concern that they would be harmed by the powerful promotional and advertising programs that Procter was capable of conducting (R. 355a–361a, 787a, 832a, 912a, 946a, 961a, 973a, 992a, 1016a, 1036–1037a, 1094a).

bleach. The economics of the bleach business, and the strong competitive factors as illustrated by our experience in Erie, Pennsylvania, make it impossible, in our judgment, for us to expand our market on liquid bleach. * * *

II. THE PROCEEDINGS

A. THE DECISION OF THE FEDERAL TRADE COMMISSION [22]

The Commission found that the acquisition of Clorox by Procter might substantially lessen competition, or tend to create a monopoly, in the household liquid bleach industry, and ordered divestiture (R. 388a–465a). Observing that the threat of new entry frequently acts as an important and salutary restraint upon the exercise of market power by oligopolists, and that the liquid-bleach industry was highly oligopolistic at the time of the merger, the Commission found that the merger substantially impaired the effectiveness of this restraint. It pointed out that although advertising had apparently been an important factor in the rise of Clorox to a position of dominance in the industry, and in the maintenance of its dominant position, prior to the merger Clorox had been a relatively small, single-product firm, incapable of massive advertising and consumer promotions, and ineligible for the substantial discounts that the mass media make available only to very large national advertisers, like Procter (R. 434a–435a). The merger gave Clorox access to the considerable advertising and

[22] We refer to the Commission's final decision of November 1963. It had previously rendered an interlocutory opinion remanding the case to the hearing examiner (see p. 3, *supra*).

promotional advantages that large, multi-product firms like Procter possess—for example, advantages of price, programming flexibility, and sponsorship in national television advertising, and virtually limitless financial resources to support large advertising budgets and to enable costly, but highly effective, consumer promotion campaigns using coupons, premiums, and similar devices (R. 400a, 433a–438a). Since advertising and marketing are crucial to the successful marketing of bleach, the Commission concluded that Procter would have substantially greater competitive power in the liquid-bleach market than Clorox had had, and that—whether or not Procter exercised its power—firms contemplating entry into the bleach industry would be deterred (R. 441a–442a). Hence the salutary check that potential competition provides in a highly concentrated and oligopolistic industry like bleach would be weakened (R. 440a–441a, 450a). In addition, what actual competition remained in the industry would likely be chilled by Clorox's enhanced market power (R. 439a–440a, 451a).

The Commission also found that the merger would seriously harm potential competition by eliminating Procter as a prospective entrant into the bleach industry (R. 454a–455a). Prior to the merger, Procter, the Commission found, was the most likely prospective entrant, not only because of its proven capacity for successfully introducing new brands in industries closely related to bleach,[22] but also because

[22] Comet, like liquid bleach, was advertised as a whitener and disinfectant, and contained bleach (CX 153A–G, R. 128x–134x; *supra*, p. 16 and n. 17).

it had in fact carefully considered entering the liquid-bleach industry on its own. (R. 402a–403a). Had it not purchased Clorox, it would have remained a restraining influence on Clorox's exercise of market power because it had the incentive and ability to enter the bleach industry. In time, moreover, it might actually have entered, thereby eroding Clorox's dominant position and perhaps reducing the concentration of the industry.

B. THE DECISION OF THE COURT OF APPEALS

The Court of Appeals for the Sixth Circuit ruled that the Commission's finding of illegality had been based on treacherous conjecture, mere possibility, and suspicion (R. 1565, 1568) and set aside the Commission's order (R. 1569). The court found nothing unhealthy about the liquid-bleach industry simply because one producer controlled 50 percent and six producers 80 percent of the national market, and held that the advertising and marketing advantages which might accrue to Clorox as a result of the merger were economies and "the fact that a merger may result in some economies is no reason to condemn it" (R. 1563). It rejected the Commission's finding that the merger eliminated the important potential competition of Procter with the observation that "[t]here was no reasonable probability that Procter would have entered the household liquid bleach market but for the merger." (R. 1568.)

Before the court of appeals, Procter also challenged the Commission's decision on procedural grounds—alleged reliance by the Commission on matters *dehors*

the record, and the Commission's allegedly improper failure to adhere in its second decision to the principles of its earlier interlocutory decision. On these issues, the court upheld the Commission (R. 1557–1558).

SUMMARY OF ARGUMENT

The Federal Trade Commission found in this case that the acquisition of the Clorox Company, the nation's largest producer of household liquid bleach, by the Procter & Gamble Company, a large manufacturer of many household items—such as soap and detergent—that are closely related to liquid bleach, might substantially lessen competition or tend to create a monopoly in the bleach industry; and that the acquisition was therefore unlawful under Section 7 of the Clayton Act. The Commission's reasoning and conclusion, we believe, are soundly based on the teachings of this Court, and we submit that the court of appeals' action in setting aside the Commission's order reflects a basic misapprehension of those teachings.

At the heart of this case is the proposition that in an industry already highly concentrated and oligopolistic in structure—one where a few firms control most of the business—potential competition provides an important, and indeed indispensable, restraint upon the exploitation by the dominant firms of their freedom from significant actual competition. It deters them from increasing their prices and profits to a level at which entry by new competitors would be feasible and attractive; and the result is at least some approach toward the market conditions that actual competition

would determine. A merger which appreciably reduces the efficacy of potential competition in non-competitively structured markets is, accordingly, cause for grave concern under the antitrust laws.

The Commission found that the acquisition of Clorox by Procter was likely to have this effect. The bleach industry was highly concentrated, with two firms accounting for 65 percent of the nation's sales and six for 80 percent. Clorox alone had 50 percent, and much more in some areas of the country. In this oligopolistic setting, the importance of preserving effective potential competition could hardly be overemphasized. The merger undermined its efficacy in two cardinal respects.

First, it increased the difficulty of new entry by conferring on Clorox substantial new competitive advantages in the area that matters most in the bleach industry—"preselling" the consumer, by heavy advertising and sales promotions, on the real or supposed virtues of the manufacturer's particular brand. Before the merger, Clorox, being a relatively small, single-product firm, did not have access to important advertising and promotional advantages that only large, multi-product firms like Procter enjoy—for example, large volume discounts for network television advertising—and Clorox's advertising budget was quite limited compared to that of a firm like Procter. Union with Procter promises that Clorox can presell its brand still more effectively than heretofore and increase still more the already settled consumer preference for the brand. This will make it even more difficult for a newcomer to gain a foothold—and

should he, despite the obstacles, attempt entry, he would find that Clorox's power to repel a new competitor has greatly increased. Recognizing this, prospective entrants will be more reluctant than ever to essay entry. The threat of entry—and the salutary restraint on the expoitation of market power that it provides—has thus been substantially reduced.

The Commission also found the efficacy of potential competition impaired by the elimination of Procter as a prospective entrant into the bleach industry. Procter was one of the few firms with sufficient resources and marketing experience to enable a successful challenge to Clorox, and it had actually pondered entry. It must surely have figured as a palpable restraint on Clorox's conduct. No longer need Clorox curb its power to obtain higher-than-competitive profits out of concern for Procter's response.

The court of appeals brushed aside, as based merely on conjecture and suspicion, the Commission's analysis of the importance of maintaining effective potential competition in the bleach industry and its delineation of the serious adverse impact of the merger on that competition. The court found nothing untoward in the competitive structure of the bleach industry at the time of the merger—thus ignoring this Court's emphasis upon undue concentration as an index to competitive health. The court discounted the enhanced power that Clorox derived from the merger on the grounds (1) that, since the merger, Clorox has not generally availed itself of the advertising and promotional advantages that its union with Procter enables, and (2) that, in any event, "ec n-

omies" in the cost of advertising and promotion are never a proper basis for striking down a merger. The court failed to consider, however, that it is the power of Clorox, backed by Procter, to respond devastatingly to any attempt of new entry, not the use of that power, that deters prospective entrants; only if entry were attempted would Clorox have occasion to utilize to the maximum its new competitive advantages.

That these advantages may represent in part the ability to purchase advertising at a lower cost than before the merger cannot, in the circumstances, save the merger from condemnation. These cost advantages are not "economies" that antitrust law seeks to encourage. They are not likely to be passed on to the consumer, or, indeed, to be used for any purpose save to enable additional advertising to be purchased in an industry already saturated by advertising—an industry where additional advertising by the dominant firm could have no purpose of informing the consumer, but could serve only to make entry by new competitors more difficult and thus to discourage, not promote, the efficient conditions that vigorous competition would create.

Finally, the court below held that the elimination of Procter as a potential competitor had no significance in the absence of evidence that Procter in fact intended to enter the bleach industry. But Procter's actual intentions are quite irrelevant. So long as Procter remained at the edge of the market, well able to enter should conditions ripen, Clorox had an incentive not to engage in the kind of conduct that

would have made entry attractive to Procter—such as maintaining prices too far above the competitive level.

The court of appeals dismissed two additional points that, in our view, persuasively support the Commission's findings: first, that, in enhancing Clorox's competitive power, the merger not only diminished the restraining effect of the threat of new entry into the bleach industry but also tended to chill what actual and potential competition existing bleach producers might supply; secondly, that the merger, by weakening potential competition, retarded the prospects for eventual erosion of the high concentration of the bleach industry through new entry.

ARGUMENT

The merger at issue in this case joined the nation's leading manufacturer of household liquid bleach, Clorox Company, with the nation's leading manufacturer of household cleaning products generally, Procter & Gamble. The Federal Trade Commission held the merger unlawful under Section 7 of the Clayton Act on the ground that its effect might be substantially to lessen competition, or tend to create a monopoly, in the manufacture and sale of household liquid bleach. Since Procter was neither an actual competitor of Clorox (it did not make or sell a liquid bleach or any close substitute therefor) nor a supplier to or customer of any bleach manufacturer, the merger does not fit into the conventional horizontal or vertical categories. But Section 7 is not

limited to those categories;[24] it also covers so-called "conglomerate" mergers,[25] such as that here involved, and we shall demonstrate that the theory of illegality upon which the Commission's decision is based represents a logical and sound development of principles well established in the Section 7 decisions of this Court. We shall also show that the Commission correctly applied its theory to the circumstances of the present case. More pertinently, perhaps, we shall show that the court of appeals, in overturning the Commission's finding of illegality, quarreled not so much with the substantiality of the supporting evidence as with the Commission's underlying theory. In rejecting that theory, the court radically, and we think erroneously, curtailed the scope of Section 7 as applied to the important and rapidly growing conglomerate merger movement.[26]

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[24] See *Federal Trade Commission* v. *Consolidated Foods Corp.*, 380 U.S. 592; *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 317; H. Rep. No. 1191, 81st Cong, 1st Sess., p. 11.

[25] The *Consolidated Foods* case, *supra* n. 24, is the only previous conglomerate merger case to have reached this Court. The Court held there that a merger which creates a probability of substantial reciprocal buying violates Section 7. Reciprocal buying is not involved in the present case, although we believe that the *Consolidated Foods* decision affords support by analogy to the Commission's position here (see pp. 47–48, n. 39, *infra*).

[26] See, *e.g.*, Hearings before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, 89th Cong., 1st Sess., pursuant to S. Res. 40, Pt. 2, p. 516.

I

A CONGLOMERATE MERGER THAT SUBSTANTIALLY IMPAIRS THE EFFICACY OF POTENTIAL COMPETITION AS A RESTRAINT UPON ANTICOMPETITIVE CONDUCT IN HIGHLY CONCENTRATED MARKETS IS UNLAWFUL UNDER SECTION 7 OF THE CLAYTON ACT

In a market of many sellers of roughly comparable size and strength, one can ordinarily rely on competition among them to keep prices down, to promote efficiency, and to spur innovation. But a similar assumption cannot be safely indulged where the market is highly concentrated—where a few sellers account for most of the sales. In such a market, as this Court has observed (*e.g., United States* v. *Philadelphia National Bank*, 374 U.S. 321, 363), there is great danger that the major sellers will find their interests best served by tacitly renouncing vigorous price competition—by adopting a policy of "live and let live"—and that the remaining sellers, being much smaller, will dare not challenge this policy. In these circumstances, actual competition ceases to be a vital force; by mutual consent, it is abandoned in favor of parallel behavior and the "easy life." *United States* v. *Aluminum Co. of America*, 377 U.S. 271, 280.

Yet the sellers in the market may still be subject to a significant form of competitive restraint—that of potential competition.

An oligopolist may be confident that, if he raises his price, his competitors will follow suit. Even so, before initiating a price rise, he must consider the possibility that a higher price level might induce sellers from outside the market to attempt entry. To be sure,

existing sellers normally can assume that new entrants will encounter initial cost disadvantages that impose a barrier to such entry; but that advantage may cease to be crucial once the prevailing price in the market rises to a point at which the newcomer, despite higher initial cost, can make a substantial profit selling at the market price. Since the entry of new competitors is bound to erode the market share of the existing sellers, those sellers have a palpable interest in keeping the market price low enough to make entry unattractive. Thus, the threat of entry—potential competition—restrains oligopolists from exploiting fully their market power; it is some substitute for the actual competition which oligopolistic markets tend to lack.

It is, to be sure, an imperfect substitute. To the extent that there are barriers to entry—and there rarely are none—sellers in the market may be free within a considerable range to raise prices without thereby inviting entry. Nevertheless, potential competition has an important and salutary role to play in concentrated markets. This is well recognized in the economic literature,[27] in the opinions of the Federal Trade Commission,[28] and in the opinions of this Court.[29] That a

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[27] See Bain, *Barriers to New Competition* (1956), *passim*; Wilcox, *Competition and Monopoly in American Industry*, T.N.E.C. Monograph No. 21 (1940), pp. 7–8; Clark, *Competition as a Dynamic Process* (1961), p. 372; Weston, *The Role of Mergers in the Growth of Large Firms* (1953), p. 109.

[28] Besides the instant case, see *Foremost Dairies, Inc.*, 60 F.T.C. 944; *Ekco Products Co.*, Trade Reg. Rep. (1963–1965 FTC Transfer Binder), ¶ 16,879, affirmed, 347 F. 2d 745 (C.A. 7); *Beatrice Foods Co.*, 3 Trade Reg. Rep., ¶ 17,244. In *Beatrice*, the Commission pointed out that in about one-third of the nation's largest (billion-dollar) industries, the four largest firms had at least 50

merger which eliminates or weakens potential competition may—depending, of course, on the circumstances—thereby violate Section 7 is, by now, settled law.

A merger might produce such an effect in one of two ways. First, it might increase the difficulty of entering the market by conferring upon one of the market leaders a competitive advantage not already enjoyed by the other sellers in the market; any such increase in the height of the barriers to entry would

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percent of total sales, and that in view of the prevalence of high concentration in American industry "the importance of potential competition in the administration of a statute concerned with the long-range competitive prospects of the American economy is manifest." 3 Trade Reg. Rep. at pp. 22, 333.

[29] In *United States* v. *Continental Can Co.*, 378 U.S. 441, 465–466, the Court pointed out that the mere "possibility" of new competition "over the long run acts as a deterrent against attempts by the dominant members of either industry to reap the possible benefits of their position by raising prices above the competitive level." And in *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158, the Court observed that, even if a firm is not likely to enter the market immediately, the fact that it appears to await only an opportune moment to do so is highly significant. A violation of Section 7 may therefore be predicated upon the elimination of "the potential competition of the corporation that might have remained at the edge of the market, continually threatening to enter" (378 U.S. at 173). Cf. *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 659, where the Court noted that "the mere efforts of Pacific Northwest to get into the California market, *though unsuccessful*, had a powerful influence on El Paso's business attitudes within the State" (emphasis added). The foregoing are Section 7 cases. But even under the more rigorous standards of the Sherman Act, restraints upon potential competition have often been held illegal. See *United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 150–153; *United States* v. *Griffith*, 334 U.S. 100, 107; *United States* v. *Reading Co.*, 226 U.S. 324, 351, 369–371; *United States* v. *United Shoe Machinery Corp.*, 247 U.S. 32, 53.

enlarge the range within which the existing sellers were free from competitive restraint. Secondly, if one of the parties to the merger was a prospective entrant into the market of the other, the merger would weaken potential competition by thinning the ranks of the potential competitors. This second dimension has received explicit recognition in the decisions of this Court (see p. 33, n. 29, *supra*). The first has not. But, if a merger may be illegal by reason of eliminating a potential competitor, it also is reasonable that it may be illegal by making the entry of *any* new competitors substantially more difficult and thereby weakening potential competition generally.

To find that a merger has one or even both of these effects is not necessarily conclusive on the question of its illegality. Eliminating one of many equally able and willing potential entrants would not substantially impair the efficacy of potential competition; nor would raising barriers to entry imperceptibly. And some competitive advantages that raise entry barriers seem a dubious predicate of antitrust illegality, since they reflect the kind of efficiencies—in production, distribution, and the like—that a pro-competitive policy is intended to promote. In addition, impairment of potential competition is likely to be harmless wherever the market is sufficiently unconcentrated that existing competition can be relied upon as a market regulator.

These qualifications require that the Commission and the courts proceed with care in judging a merger which affects only potential competition. But—as next we show—we believe that the Commission here proceeded with the requisite caution and that the

court of appeals set aside the Commission's order basically because it rejected the underlying theory of the Commission sketched above—and, implicitly, the teachings of this Court which sustain that theory.

II

THE MERGER OF CLOROX AND PROCTER VIOLATED SECTION 7 BECAUSE IT SUBSTANTIALLY WEAKENED POTENTIAL COMPETITION IN THE HIGHLY CONCENTRATED HOUSEHOLD LIQUID BLEACH INDUSTRY

A. AT THE TIME OF THE MERGER, THE INDUSTRY WAS HIGHLY CONCENTRATED

We indicated in the preceding point that preserving potential competition is chiefly important in concentrated markets. Those are the markets where actual competition is likely to be weak. In atomistic markets, where actual competition is generally strong, the lesser restraint imposed by the threat of new entry ordinarily has little practical significance. The bleach industry, however, was highly concentrated at the time of the merger, and actual competition almost certainly quite feeble. Two firms accounted for 65 percent of the nation's sales, and six for 80 percent, the balance of the market being divided among a fringe of small producers. By all standards, the level of concentration was plainly very high.[30]

[30] Professor Bain regards concentration as "high" where the 8 largest sellers account for 80 percent of the market's sales; here the 6 largest accounted for that amount. Bain, *Industrial Organization* (1959), p. 32. He suggests that oligopolistic interdependence in such industries is in general "very strong" (*id.*, p. 128; see, also, pp. 126–127). The bleach industry is approxi-

Moreover, the national figures tend to understate the degree to which the industry was actually afflicted with oligopoly conditions. Due to its high shipping cost, bleach cannot be transported great distances from plant; and only one firm—Clorox—had enough plants, strategically sited, to be able to sell anywhere in the nation. In some areas, Clorox faced no competition from other substantial bleach producers and its market share approached monopoly proportions; in others, it and one or two other leading producers together accounted for more than 80 percent of the market.[21]

Clearly, there is very great need to preserve effective potential competition in an industry as highly concentrated and oligopolistic as the bleach industry, where a single firm—Clorox—so patently dominated its competitors. Yet, the opinion of the court of appeals shows no recognition that potential competition was an interest worth preserving. Doubtless this re-

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mately as concentrated as the metal can industry, which the Court in *United States* v. *Continental Can Co.*, 378 U.S. 441, 459, described as "highly concentrated". See, also, *United States* v. *Aluminum Co. of America*, 377 U.S. 271.

[21] Market shares of liquid bleach brands as shown by the Nielsen Food Index for nine territories were as follows (CX 325, R. 154x):

Section of the country	Clorox	Purex	Fleecy White	Hilex	Linco	Roman Cleanser	All others
New England	56.0	.....	.....	.....	.....	.....	44.0
Metropolitan New York	64.3	.....	.....	.....	.....	.....	35.7
Middle Atlantic	71.6	.....	.....	.....	.....	.....	28.4
East Central	42.4	5.0	5.2	0.9	0.7	27.2	18.6
Metropolitan Chicago	28.6	0.1	18.9	0.1	50.3	.....	2.0
West Central	34.5	20.6	9.0	25.8	2.1	.....	8.0
Southeast	32.6	16.0	5.7	.....	.....	5.3	20.4
Southwest	43.4	30.6	3.0	.....	.....	.....	5.1
Pacific	39.2	42.4	.....	.....	.....	.....	18.4

flects the court's belief that the industry was, in fact, vigorously competitive. Wholly ignoring this Court's teachings on the anti-competitive consequences of high concentration, the court found no indication of "anything unhealthy about the market conditions" (R. 1562). It justified this finding by reference to two facts. The first was the existence of a fringe of 200 small producers accounting for 20 percent of the nation's bleach sales. Plainly, however, such a fringe affords no assurance of effective competition with the market leaders, especially since the Commission found—on evidence not seriously disputed—that these were in the main very small, weak companies.

Secondly, the court noted that, after the merger, producers other than Clorox "were selling more bleach for more money than ever before" (R. 1562–1566). But Clorox in this period increased its market share from 48 to 52 percent, thus demonstrating its ability to expand more rapidly than its competitors, and indicating that the bleach industry is becoming more, not less, oligopolistic. The importance of preserving potential competition as a restraint upon the pricing and other business behavior of the existing bleach manufacturers, notably Clorox, is, therefore, greater, not less, than it was before the merger.

It remains only to show that the merger impaired the efficacy of potential competition substantially. We demonstrate this in two stages, considering first how the merger increased the difficulty of new entry, and secondly how it eliminated a vitally important prospective entrant.

B. THE MERGER SUBSTANTIALLY INCREASED THE DIFFICULTY OF ENTRY BY GREATLY ENHANCING CLOROX'S MARKET POWER.

1. Any firm pondering entry into the bleach industry on any but the smallest scale would have to consider carefully its prospects for wresting substantial sales from the entrenched sellers, particularly Clorox, which has so large a sales share in all parts of the country. An obvious prerequisite to success would be to induce the grocer to give the new brand prominent shelf display, and the grocer would not do this unless the manufacturer had already "presold" his brand to the consuming public. Effective preselling of a new brand of bleach would require a campaign of advertising and promotion; and doubtless a costly and elaborate one would be required to overcome the established consumer preference for heavily advertised, long-familiar brands such as Clorox.

The difficulties of entry under such conditions should not be underrated.[32] But undoubtedly large firms experienced in the marketing of similar household products could—before the merger—have surmounted the difficulties. For, despite its powerful hold on the bleach industry, Clorox was a single-product firm of modest size in comparison to the major producers of low-price, rapid-turnover household

[32] The leading student of barriers to entry, Professor Bain, has described "product differentiation"—that is, the ability of a manufacturer to create a preference for his particular brand over other brands of the same product—as the most important barrier. *Barriers to New Competition* (1956), p. 216. Clorox's ability to charge a premium price for a bleach chemically identical to competing brands (see Statement, *supra*, pp. 4–5) would appear a prime example of successful product differentation.

items—companies like Colgate-Palmolive, Lever Brothers, General Foods and, of course, Procter & Gamble. Clorox's advertising budget was less than $4 million annually, and its ability to respond to any firm willing and able to expend very large sums promoting a new brand of liquid bleach consequently quite limited. Procter, by spending more than $7 million in 22 months to advertise and promote a new brand of abrasive cleanser (Comet), was able to obtain a 36.5 percent share of the market in the face of competition from well-established brands like Ajax and Bab-O (Statement, *supra*, p. 16). The same could have happened in the bleach industry. The danger was real enough to have deterred Clorox and the other major sellers from raising the price of bleach to a level at which entry would have become attractive to one or more large companies in related product lines.

It does not matter whether in fact those companies pondered entry into the bleach industry—though Procter undeniably did (Statement, *supra*, pp. 17–18). Their capacity and incentive to enter, if entry became feasible and attractive because Clorox and its competitors were maintaining high prices and reaping abnormal profits, could not have been lost upon the members of the bleach industry. It could not have failed to induce them to exercise self-restraint in pricing their brands above a competitive level and in extracting profits greater than free competition would have determined. The merger removed much of the inducement by greatly strengthening Clorox's competitive position vis-à-vis any would-be entrant (as

presently we show), as well as by taking out the likeliest challenger, Procter (as we show in the following subpart).

2. Clearly, the major competitive weapon in the successful marketing of bleach is advertising (including sales promotions). Clorox before the merger was limited in this area by the size of its advertising budget, by its inability to qualify for large discounts offered by the advertising media, and by its inability—as a single-product firm—to obtain the advantages of joint multi-product advertising and promotions. All of these limitations were removed by union with Procter, the nation's largest advertiser.

(*a*) As noted, Clorox's advertising budget before the merger was less than $4 million annually. Since this was 10 percent of its sales revenues, a substantial expansion of advertising expenditures would hardly have been feasible. Proctor's budget for advertising and sales promotions the same year was $127 million—more than 30 times larger than Clorox's. Procter, of course, sells many products, not one, and it would never expend in advertising and promoting the Clorox brand the sums that, theoretically, it could. But, equally obviously, Procter could readily expand Clorox's advertising budget to meet the short-term competitive threat posed by an attempt of a firm to enter the bleach industry with a new brand; it could (and doubtless would) respond to a massive advertising campaign on behalf of the new brand as Clorox, alone, could never have.[29]

[29] This Court has recognized the role of heavy advertising expenditures in the repulsion of new entry. In *American*

(*b*) Clorox spent more than $1 million on television advertising in the year before the merger, and while this may seem a large sum, it was not large enough to entitle Clorox to any network volume discounts. Nor did Clorox qualify for the sizeable volume discounts offered by leading magazines to large advertisers. The merger changed this. As part of the Procter family, Clorox is now entitled to the maximum discounts—25 to 30 percent—offered by the major networks, and to the magazine discounts as well. Thus, for the same sum of money, Clorox can today obtain substantially more advertising in the principal media than it could before the merger—or than any other bleach manufacturer could or can obtain. This has a twofold significance. On the one hand, it means that unless Procter actually curtails the Clorox advertising budget (an unlikely supposition—see p. 48 and n. 40, *infra*), the Clorox brand will probably be more heavily advertised than before the merger and hence

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Tobacco Co. v. *United States*, 328 U.S. 781, 797, it observed: "The record is full of evidence of the close relationship between * * * large expenditures for national advertising of cigarettes and resulting volumes of sales. * * * Such tremendous advertising * * * is * * * a widely published warning that these companies possess and know how to use a powerful offensive and defensive weapon against new competition. New competition dare not enter such a field, unless it be well supported by comparable national advertising." We do not suggest—nor did the Commission—that Section 7 would bar the acquisition of Clorox by *any* large advertiser. It may well be doubted that a firm without experience in the marketing of low-price, rapid-turnover goods would be likely to expend heavy sums to advertise the Clorox brand. And we stress that Procter's advertising budget is but one of a number of factors that—as will appear—the Commission considered in appraising the effects of the merger.

even more impervious to the inroads of a new brand that must struggle to win consumer acceptance.[24] On the other hand, it means that in the event of attempted entry Clorox can expand its advertising efforts with less financial difficulty than it could have before the merger. Both factors add significantly to the deterrence of new entry into the liquid bleach industry.

(c) A producer of many related items can frequently advertise and promote his products more effectively than a single-product firm. For example, television commercials are generally believed to be more effective when delivered during a program than when delivered between programs. The advertising message is reinforced in the viewer's mind if it is associated with a favorite program. Moreover, between programs the viewer is apt to be at his least attentive. As a single-product firm of modest size, Clorox before the merger did not, and doubtless could ill afford to, buy entire network programs. Now (as a unit of Procter) it can, and—quite apart from discounts—at a fraction of the cost. Not only is Procter a major purchaser of network programs; it typically advertises more than one product on each program, thereby giving several products network exposure at no higher cost than would be incurred in advertising a single product on a network program. And this is but one of several advertising advantages a multi-product firm like Procter enjoys in the television medium (see Statement, *supra*, p. 15).

[24] In fact, since the merger, Clorox has received some advertising discounts not theretofore available to it (R. 711a, 1123a, 1130a).

Similar savings are possible through joint sales promotions. Procter has long combined several products in one contest, premium offer, store display, or other promotion, thereby reducing the cost per product of mailing, printing or otherwise disseminating the promotion. Promotions are thus relatively far more expensive for a single-product than for a multi-product firm, and, at the time of the merger, Clorox was not using any. Since the merger the Clorox brand has been featured in sales promotions in combination with other Procter products.[35]

To the extent that Clorox actually exploits these advantages, the result doubtless will be more effective preselling of the Clorox brand.[36] This will increase

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[35] We point out, too, the marketing advantage Procter derives from having a direct sales force whose principal function is to assure that Procter products receive shelf space commensurate with their market share. A single-product firm like Clorox before the merger could not afford its own direct sales force; it used independent brokers. They carry products of other manufacturers and cannot concentrate on promoting Clorox. Procter's salesmen, on the other hand, can concentrate their efforts selectively on any Procter product that faces particularly strong competition. Procter has retained the brokers for now, but, should a need for aggressive merchandising of Clorox in competition with a new entrant arise, Procter could readily deploy its force on behalf of Clorox.

[36] A striking example of the advantages of multi-product firms—and of Procter & Gamble in particular—in marketing products of this kind is provided by *United States* v. *Lever Brothers Co.*, 216 F. Supp. 887 (S.D.N.Y.), which the Commission cited in its opinion (R. 398a). Monsanto—a large chemical company—was the first to develop a low-sudsing detergent, All, for automatic washing machines. This was the only low-price rapid-turnover consumer product that Monsanto sold. In 1954, Procter began selling a similar product, followed about six

the difficulty of a new competitor, who must, to succeed, persuade a substantial number of consumers to switch to his brand. To the extent that Clorox does not immediately exploit all of the advantages of a multi-product firm, they remain a latent threat that a prospective entrant must still consider, for actual entry is bound to evoke them.

3. The court of appeals brushed aside all of this evidence on the grounds, first, that, despite the merger, Clorox had not in subsequent years manifested any increased power and, secondly, that a merger should not be forbidden on the basis of "economies" that it makes possible. In the circumstances, neither ground is tenable.

(*a*) It may be true that since the merger [17] Clorox has been operated generally as before. It is hardly

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months later by Colgate-Palmolive. Although Monsanto made substantial advertising expenditures on behalf of All, its market share declined from 100 percent in 1953 to 55.3 percent in 1956. In 1955, Monsanto lost $416,000 on All, and in March of the following year decided that it must either sell the All trademark or acquire other consumer products to advertise and distribute with All. Efforts to develop companion products failed, and it was decided to sell the All trademark. Several prospective customers were approached, but the sale was finally made to Lever Bros. (Purex was rejected as a possible purchaser because it lacked the capital required to "effectively * * * advertise and promote 'all'." 216 F. Supp. at 896.) The district court held the acquisition lawful on the ground of Monsanto's inability to market All in competition with the big "soapers," and its findings provide strong support for the proposition that even a large single-product firm has grave disadvantages in competing successfully against a large seller of many low-cost, rapid-turnover consumer products.

[17] The merger was in 1957. The record contains evidence through 1961.

to be wondered at that Procter has been reluctant to make sweeping changes that (1) might provide the Commission with additional evidence of illegality and (2) might represent a wasted investment should the merger ultimately have to be undone as a result of this proceeding. In addition, there has been no occasion for Clorox to flex its added competitive muscle; there have been no efforts at entry.

The court of appeals failed to appreciate that it is the ability of Procter to assist Clorox to repel new competition that is the essence of the deterrent which a Procter-Clorox combination poses to prospective entrants. Actual implementation of the latent advantages that the merger creates for Clorox remains secondary until entry is actually essayed. Nor can one rely on Clorox's being deterred from utilizing these advantages to repel attempted entry by fear that its conduct might be challenged as unfair or monopolistic, in violation of Section 5 of the Federal Trade Commission Act or Section 2 of the Sherman Act. To prove predatory use of advertising and promotions in the context of an ostensibly "defensive" response to new competition would present obvious difficulties—a consideration that underscores the appropriateness of prophylactic relief under Section 7.

Finally, the post-acquisition history—which the Commission did not ignore[33]—actually confirms the

[33] The Commission expressed the view that only in the rare case should post-acquisition evidence be given much weight. We believe this is consistent with the view of the Court in *Federal Trade Commission* v. *Consolidated Foods Corp.*, 380 U.S. 592, 598, that while post-acquisition evidence may be considered in a Section 7 case, it should not be "given conclusive

inference that the merger, by enhancing Clorox's competitive capabilities in precisely the area that is crucial to success in the sale of bleach—preselling the product to the consumer through advertising and sales promotions—has reduced the likelihood of new entry and thereby enlarged the area within which Clorox

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weight or allowed to override all probabilities," since "the force of § 7 is still in probabilities, not in what later transpired. That must necessarily be the case, for once the two companies are united no one knows what the fate of the acquired company and its competitors would have been but for the merger." At all events, the Commission carefully considered the post-acquisition evidence in this case, finding that it confirmed the inference of probable anti-competitive effect that it had drawn from the other evidence, noting particularly the continued growth of Clorox's market share (see Statement, *supra*, p. 19). Three other points might be mentioned. (1) In August 1956 Babbitt, Inc. entered the bleach business through acquisition of Vano Liquid Bleach. Early in 1958, that is, shortly after the Procter-Clorox merger, Babbitt decided to discontinue the manufacture of bleach. Its board chairman testified that since 1953 it had tried not to compete unnecessarily with the "soapers" (the large soap-detergent companies), and added: "* * * I feel that one of the contributing factors to our decision to discontinue [the sale of liquid bleach] was the acquisition of Clorox by Procter & Gamble, since it was obvious that we would not, under these conditions, entertain any thought of establishing a satisfactory franchise on Vano Liquid Bleach" (R. 361a). (2) After the merger, Clorox—using sales promotions that it had not been using at the time of the merger—broke up Purex's attempt to test-market a new bleach container in Erie, Pennsylvania. Shortly after, and at least partly because of, the Erie incident, Purex purchased the fourth largest bleach producer, John Puhl Products Company, in order to expand its geographical selling area (R. 1492a–1493a). Thus, it may well be that the Procter-Clorox merger has accelerated the trend toward concentration in the bleach industry. (3) Clorox has availed itself of some advantages of its union with Procter (see p. 43, *supra*, and p. 42, n. 34, *supra*). Entry is probably more difficult as a result (see pp. 41–42, 43–44, *supra*).

is free to increase price and profit without concern that new competitors will be attracted.

(*b*) We would agree with the court of appeals that, in general, advantages afforded by a merger which reflect simply greater efficiency ought not be a basis for holding the merger illegal; efficiency is, after all, a prime goal of antitrust. But that principle is inapplicable, we believe, to the circumstances of this case.

The most conspicuous cost advantage that Clorox is able to obtain by virtue of its union with Procter involves the volume discounts that the media afford very large advertisers like Procter. These discounts are available only to giant firms. Neither Clorox nor Purex qualified for them, though both are heavy advertisers and Purex is a diversified producer of consumer products with total annual sales of $50 million. These are not small advertisers; yet they must pay much more than Procter for the same television coverage. The inference seems inescapable that the network's discounts are unjustified concessions to their larger customers and would—but for the jurisdictional limitations of the Robinson-Patman Act—constitute price discriminations forbidden by that Act.[29]

[29] Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, 15 U.S.C. 13, applies only to sales of "commodities", not services like advertising. It is probable, though, that discriminatory advertising discounts could be reached under Section 1 of the Sherman Act, 15 U.S.C. 1, or Section 5 of the Federal Trade Commission Act (unfair methods of competition), 15 U.S.C. 45. Cf. *Federal Trade Commission* v. *Motion Picture Advertising Service Co.*, 344 U.S. 392, 395; *Grand Union Co.* v. *Federal Trade Commission*, 300

Even if the merger enabled actual cost savings in the advertising and promotion of Clorox bleach, it is doubtful that the consumer would benefit, either directly through lower prices or indirectly by freeing resources at present tied up in advertising for productive use elsewhere. It seems more likely that any such "savings" would simply be used to obtain greater advertising of the Clorox brand than Clorox could afford before the merger,[40] and thereby to enhance Clorox's ability to charge a premium price for a product physically indistinguishable from its competitors'. It would appear that there is hardly a lack of advertising in this industry and that Clorox has not suffered from underexposure of its brand to the consumer. The court of appeals itself suggested that advertising of liquid bleach may have reached the saturation point.

In short, reductions in the cost of advertising the Clorox brand, by enabling the industry's dominant firm to increase still further the intensity of its preselling efforts, *only* strengthen barriers to entry; for the adverse competitive effect that results from these cost advantages cannot be justified as necessary to give consumers needed additional information about the Clorox brand.

F. 2d 92 (C.A. 2). Assuming the advertising discounts in this case are unjustified, the case is much like *Federal Trade Commission v. Consolidated Foods Corp.*, 380 U.S. 592, where the Court held a merger illegal because it fostered the unfair and anti-competitive practice of reciprocal buying.

[40] Procter's promotion department, in recommending the purchase of Clorox assumed that Procter would not reduce Clorox's advertising budget, but, rather, obtain more effective advertising for the same expenditure (see Statement, *supra*, p. 19).

C. THE MERGER REMOVED AN IMPORTANT CHECK ON CLOROX'S EXPLOITATION OF ITS MARKET POWER—THE THREAT OF ENTRY POSED BY PROCTER

We have pointed out that Clorox's power over price was limited by the prospect that, should it raise its price too high above a competitive level, firms in related product lines—and particularly the big "soapers," Lever Brothers, Colgate-Palmolive, and Procter—would find entry into the bleach business both feasible and attractive. The likeliest of these prospective entrants was, surely, Procter. (1) It had recently, and very successfully, launched a new brand in an industry—abrasive cleaners—quite like bleach, wresting market leadership within two years from a brand that had enjoyed even a larger market share than Clorox in its industry (see Statement, *supra*, p. 16). (2) In the form of competition that is crucial in the bleach industry—advertising and promotions—Procter had, as we have seen, substantial advantages, as a large multi-product firm, vis-à-vis the much smaller, single-product, Clorox operation. (3) Procter was constantly on the lookout for new fields, closely related to its basic products, into which to diversify;[11] and bleach was a natural, being a product that is used by the housewife complementarily with soaps and detergents—Procter's major lines. (4) Procter had actually pondered the possibility of entering the bleach industry on its own.

[11] Procter's president testified that approximately 70 percent of Procter's household-product volume comes from products not in existence in 1946 (R. 298a). Between 1952–1957 Procter's net sales rose from $818 million to $1.15 billion (CX 6, R. 7x; CX 14, R. 18x)—an increase of 41 percent—and a substantial part

It is true that the promotion department at that time recommended against entry other than by acquiring Clorox. This—plus the fact that Procter had never attempted to enter the bleach industry on its own—persuaded the court of appeals to reject this branch of the Commission's analysis. In so doing, the court in our view again missed the significance of potential competition as a restraint upon oligopolistic conduct. The Commission itself declined "to speculate on * * * whether or not Procter, had its acquisition of Clorox been blocked, would in fact have entered the bleach industry on its own" (R. 455a). For, it pointed out, the value of potential competition as a salutary restraint upon abuses of power by monopolists and oligopolists (like Clorox) lies not only, or principally, in the likelihood that the potential competitor will soon become an actual one; the threat of future entry itself is a restraint, even if the threat does not soon materialize. This is because an oligopolist faced by such a threat will, as a matter of common business sense, avoid conduct calculated to attract the potential competitor into the market—like raising prices too far above the competitive level. It was thus quite appropriate for the Commission to conclude that Clorox's dominance was limited by the indisputable fact that Procter was ready, willing and able to produce liquid bleach itself in competition with Clorox if entry became attractive.

Absence of any internally manifested intent to enter the market is thus unimportant. Indeed, if Procter

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of this growth reflected the introduction of new brands, such as Comet cleaner, Zest toilet bar, and Crest and Gleem dentifrices, in industries where Procter had not previously sold (R. 553a–555a, 557a–558a; CX 6, R. 11x; CX 632A–D, R. 271x–277x).

had intended immediately to enter on its own, the implication would be that the threat of its entry had failed to deter Clorox from risking new entry by maintaining high prices. Furthermore, from the standpoint of deterring Clorox from exploiting the weakness of present competition, what matters is not what Procter's officials in fact thought of entering the liquid bleach industry other than by acquiring Clorox, but the objective appearances—all that Clorox had to go on. To Clorox, Proctor was, surely a continuing threat to enter. Indeed, a more likely entrant on a large scale into that industry is hard to conceive.

The present case may indeed be a classic instance of the efficacy of potential competition. Procter was clearly interested in entering the bleach industry, but Clorox apparently refrained from making conditions in the industry attractive enough to induce Procter to take the step; evidently, Clorox's price was low enough to discourage entry by a firm, like Procter, which undoubtedly has a high target rate of return.[42] This important restraint has been removed by the merger. Other prospective entrants doubtless remain; but, surely, not many that would be likely to challenge a firm as well entrenched as Clorox; and none so likely as Procter. Moreover, other large multi-product manufacturers, who might well have entered if the principal competitor was Clorox, probably have much less enthusiasm for the industry now that they must pit their competitive efforts against a firm with Procter's market power and advantages.

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[42] See CX 324, R. 150x–151x.

D. THE MERGER NOT ONLY REMOVED A RESTRAINT ON OLIGOPOLISTIC CONDUCT PROVIDED BY FIRMS OUTSIDE THE BLEACH INDUSTRY; IT ALSO TENDED TO CHILL SUCH COMPETITION—ACTUAL AND POTENTIAL—AS REMAINED IN THE BLEACH INDUSTRY AND TO DIMINISH THE PROSPECTS FOR THE INDUSTRY'S EVENTUAL DECONCENTRATION

Our emphasis thus far has been on the importance of preserving the potential competition of prospective entrants into the bleach industry as a check on the behavior of the existing producers, notably Clorox. But it is also important to note that the factors that make Clorox since the merger better able to repel entry by a complete newcomer to the industry also enhance its ability to repel competitive forays by existing bleach producers. Expansion by regional or local producers into areas they have not theretofore sold in, no less than entry by outsiders, is more likely to be deterred by a firm of Procter's capabilities than by the more modest, if still formidable, capabilities of Clorox before the merger.[43]

Moreover, the merger reduces the likelihood that eventually enough firms will enter the bleach industry to erode Clorox's undue market share and thereby produce a healthier, less concentrated, market structure. This Court has emphasized that it is an important goal of Section 7 to preserve the possibility of eventual deconcentration of highly concentrated industries and markets "—of which the bleach industry,

[43] The Erie incident may be a case in point here (see p. 46, n. 38, *supra*). And the record is replete with testimony that Procter is a far more feared competitor in the liquid bleach industry than Clorox was (R. 355a–361a, 787a, 912a, 946a, 972a–973a, 992a, 1016a, 1037a, 1094a).

[44] See *United States v. Philadelphia National Bank*, 374 U.S. 321, 365, n. 42; *United States* v. *Aluminum Co. of America*,

as we have seen, is a prime example (pp. 35–36, *supra*). It is difficult to foresee this development in the bleach industry unless there is extensive entry; there are at present no bleach producers capable of challenging Clorox. Hence it is essential that the likelihood of new entry not be reduced by mergers which, like the one challenged here, make entry substantially more difficult, and at the same time remove a leading prospect for entry.

These points, too, were summarily dismissed by the court of appeals, doubtless because of its erroneous view that competitive conditions in the industry were satisfactory. Yet, combined with the palpable effect of the merger on the effectiveness of potential competition as a restraint upon oligopolistic behavior in the bleach industry, they provide, we believe, ample support for the Commission's finding of illegality.

CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded with instructions to affirm and enforce the Commission's order.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.
DONALD F. TURNER,
Assistant Attorney General.
RICHARD A. POSNER,
Assistant to the Solicitor General.
ROBERT K. BAKER,
Attorney.

DECEMBER 1966.

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377 U.S. 271, 278; *United States* v. *Continental Can Co.*, 378 U.S. 441, 461.

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APPENDIX

The exhibits cited in this brief were admitted in evidence at the following places in the record:

Ex. No.	Admitted in evidence
CX 6	R. 498a
CX 12	R. 500a
CX 14	R. 501a
CX 17	R. 501a
CX 18	R. 502a
CX 21A–B	R. 502a
CX 27	R. 503a
CX 111A–I	R. 504a
CX 153A–G	R. 506a
CX 279A–O	R. 507a
CX 323A–C	R. 582a
CX 324A–D	R. 582a
CX 325	R. 588a–589a
CX 336	R. 589a
CX 342	R. 611a
CX 348B	R. 612a
CX 413A–B	R. 674a
CX 420	R. 707a
CX 429A–B	R. 712a
CX 437	R. 720a
CX 438	R. 747a–748a
CX 447	R. 788a
CX 450	R. 796a
CX 454A–C	R. 754a
CX 529	R. 1033c
CX 534	R. 1088a
CX 538B	R. 1099a
CX 571A	R. 1154a
CX 573E	R. 1151a
CX 575	Tr. 3880
CX 632A–D	R. 1159a
CX 696A–J	R. 1503a
CX 702	R. 1504a
CX 710A–B	R. 42a–43a
CX 718A–F	R. 1529a–1530a
RX 83	R. 1306a
RX 112A–U	R. 1442a
RX 135B	R. 1544a

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

FEDERAL TRADE COMMISSION, *Petitioner,*

v.

THE PROCTER & GAMBLE COMPANY, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT

KENNETH C. ROYALL,
FREDERICK W. R. PRIDE,
ROBERT D. LARSEN,
200 Park Avenue,
New York, N. Y. 10017.
Attorneys for *The Procter & Gamble Company.*

RICHARD W. BARRETT,
THOMAS S. CALDER,
DINSMORE, SHOHL, BARRETT,
COATES & DEUPREE,
12th Floor Central Trust Tower,
Cincinnati, Ohio 45202.

ROYALL, KOEGEL, HARRIS & CASKEY,
1730 K Street, N. W.,
Washington, D. C. 20006.
Of Counsel.

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Tennant, "*An Economist's View*," Symposium: "Advertising, Competition and the Antitrust Laws," August 10-13, 1964, 26 A. B. A., Section of Antitrust Law 168 40

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BRIEF FOR THE RESPONDENT

Question Presented

The question presented is whether the Sixth Circuit was correct in holding that there was no substantial evidence to support the conclusions of the Federal Trade Commission that the acquisition here in question would probably result in a substantial lessening of competition in the liquid bleach industry.

The Government's framing of the Question (Gov't Br. p. 2) is designed to bypass and disregard the appellate review which has been had. It is the validity of the ruling of the Sixth Circuit, rather than a *de novo* evaluation of the decision of the Federal Trade Commission, which is the controlling issue on this appeal.

Statutes Involved

In addition to the "Statutes Involved" as set forth in the Government's brief, there is also involved Sections 5, 7 and 10 of the Administrative Procedure Act (60 Stat. 239, 5 U. S. C. A. § 1004; 60 Stat. 241, 5 U. S. C. A. § 1006; 60 Stat. 243, 5 U. S. C. A. § 1009), which provide in pertinent part:

> *Section 5,* "(a) Persons entitled to notice of an agency hearing shall be timely informed of . . . (3) the matters of fact and law asserted."
>
> *Section 7,* "(c) . . . [T]he proponent of a rule or order shall have the burden of proof. . . . [N]o sanction shall be imposed or rule or order be issued except upon consideration of the whole record . . . and as supported by and in accordance with the reliable, probative, and substantial evidence."
>
> *Section 10,* "(e) . . . the reviewing court shall . . . (B) hold unlawful and set aside agency action, findings and conclusions found to be . . . (5) unsupported by substantial evidence. . . ."

Preliminary Statement

The basic issue posed on this appeal is whether there is substantial evidence to support the Government's theories and conclusions respecting the illegality of this challenged acquisition. As to this issue, it matters little as to how the Government's "underlying theories" are framed. Determinative here is whether, in this record, there is substantial evidence to warrant the application of those "theories."

The court of appeals has held that such evidence is not contained in the record. We maintain that, in the context

of this case, that decision should be controlling. And even were this Court to proceed to a *de novo* review of the record, the same conclusion is required. For in every real sense, to accept the Government's position is simply to relieve it of the Congressional stricture that violations of Section 7 must be established by substantial evidence. It would permit speculation to take the place of proof, and theory and assumption to be substitutes for evidence.

We say this runs counter to every decision of this Court involving Section 7. And arguments of expediency to facilitate governmental attacks upon conglomerate mergers cannot justify standards which would endow enforcement agencies with arbitrary power and make judicial review perfunctory.

In taking this appeal for the avowed purpose of securing some express recognition of its "theories," the Government, we maintain, has picked the wrong case and the wrong record. All of the decisions and the teachings of this Court require the conclusion that, as to this particular acquisition and on the facts contained in this record, no illegality has been established.

Statement of the Case

The first half of the Government's brief is devoted to "The Facts" (Gov't Br. pp. 4-22). This consists of an extensive statement of those "facts" which the Government wishes to emphasize, interwoven in which are argumentation, speculation and assumption.

We here supplement the Government's statement by setting forth certain significant facts unnoted by it.* We also advert to various matters in the Government's state-

*In the main, however, we will deal with the Government's treatment of the record in our response to the "Argument" section of its brief.

ment which are fallacious or unwarranted by anything in the record.

1. History and Description of Clorox Chemical Co.—the Acquired Company

Clorox Chemical Co. was organized in 1928 (R. 650a).* From the time of its origin until its acquisition by Procter, it had been engaged solely in the manufacture and distribution of liquid bleach (R. 520a-521a). Its owners, who were its operating executives, delevoped this single product company into an important and successful business entity (R. 517a, 623a, 1216a; CX 28, R. 107X, 685a).

The success of Clorox Chemical was achieved entirely on its own (Complaint and Answer, Par. 8, R. 20a, 32a). Its market share, gauged on a national basis, was greatly in excess of any of its competitors; although in certain sections of the country there were long established competitors with larger shares (R. 314a, 849a, 1075a, 1406a-1407a).

Clorox Chemical at the time of the acquisition was entirely self-sufficient. It had the "know-how" and more than adequate resources—to say nothing of credit—to support any merchandising or expansion program which could reasonably be contemplated within the bounds of responsible business judgment (R. 523a, 642a, 1349a-1350a, 1384a; CX 12, R. 15X-16X, 500a). It is uncontradicted that the acquired company needed nothing from Procter or anyone else to maintain and improve its position.

2. The Product

The basic *chemical* formula of most so-called "quality" liquid bleaches is the same (R. 727a, 875a; but see 881a,

*For the convenience of the Court, citations to the record are in the form used by the Government and as described in footnote 1 at page 1 of its brief. Where exhibits are cited, the page number at which the exhibit was admitted in evidence follows the page number at which the exhibit appears.

986a-987a). The product, however, has potentially dangerous attributes (R. 1173a-1177a, 1188a-1189a). This dictates that strict controls over quality must be exercised to insure uniformity of performance and safety in its use (R. 1188a-1189a, 1192a). Such controls were a significant factor in Clorox's success* (R. 1174a-1176a; CX 372D, R. 163X, 612a; CX 423,** R. 173X, 711a; CX 424,** R. 174X, 711a).

The Government attributes the success of Clorox solely to "shelf space" and "advertising and promotions" (Gov't Br. p. 8). While such merchandising tools may encourage the consumer to make an initial purchase, they furnish no guaranty of repurchases or continued patronage of any brand. That is dependent upon quality and confidence on the part of the housewife. The court below recognized this and, in rejecting the same contentions now advanced by the Government, stated (R. 1561-1562):

> ". . . Clorox attributed its success to its maintaining a high degree of quality control in its production process. The fact that prior to the merger its sales accounted for nearly fifty per cent of the market, would seem to indicate its product's wide

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*Indeed, the uncontradicted evidence showed (R. 643a, 1173a-1176a, 1188a-1189a, 1192a):

(1) Independent laboratory tests of Clorox, as compared with other bleaches, demonstrated its superiority;

(2) Clorox's claim of antiseptic properties higher than any other bleach had been advertised for a number of years, and there was no proof that such claim was ever successfully questioned or contradicted; and

(3) Clorox at all times maintained a high degree of care in the manufacture, control and inspection of its product in order to make certain that it was uniform and stable.

**The exclusive patented formula held by Clorox Chemical Co., referred to in CX 423 and CX 424, has now expired, although the product continues to be manufactured under the same process (R. 1192a).

> acceptance and preference by housewives . . . . But even though the advertising [of Clorox] was extensive, the product had to be good in order for it to obtain repeat-purchases by the housewife. This is demonstrated by the fact that large chains like A&P and Safeway Stores carry Clorox on their shelves even though they market their own private brands of bleach."

3. The Acquisition

The negotiations leading up to the acquisition were initiated by the stockholders of Clorox (R. 650a-653a). The principal owners were advanced in years, failing in health and interested in placing their investment in more readily marketable form (R. 599a, 623a, 654a, 1216a; CX 28, R. 107X, 685a). As noted by the court of appeals (R. 1568):

> "Clorox desired to sell its assets. Its owners were reaching the age of retirement and wanted to transform their stock into a marketable security of a successful company. A small company could not qualify. Clorox either had to sell to a larger company or not sell at all."

The negotiations commenced in 1955; were discontinued by reason of the failure to agree upon price; were resumed in 1957 and the Clorox assets were acquired by Procter in exchange for Procter's stock (R. 650a-652a).

There is not a jot of evidence indicating that, prior to these overtures to it, Procter had ever been interested in entry into the liquid bleach business. As we shall later show, the Government's unqualified assertions that Procter had "pondered" entry on its own, or had made a "two-year study" of the industry (Gov't Br. pp. 17, 49), or had

evinced any interest in, or likelihood of, independent entry represent an inexcusable distortion of the record.*

4. Description of Procter

The facts pertaining to Procter, as set forth in the Government's Statement, are all directed to emphasizing Procter's size and success as premises for inferences and innuendoes unwarranted by the facts. Thus, for example, the Government's emphasis on Procter's *overall* advertising and promotional expenditures is designed to embellish the concept of Procter's size, without regard to the number of products which these total expenditures actually support. Based simply on the Government's listing of some of Procter's important brands,** it is apparent that the advertising and promotional expenditures per brand average considerably less than the more than five million dollars spent by Clorox Chemical in promoting the Clorox brand in the last year prior to the acquisition (RX 83, R. 453X, 1306a, *in camera*).

Another instance of the Government's propensity for exaggeration is the treatment accorded to Procter's introduction of its product Comet in 1956-57. The Government suggests that it was solely because of a "massive" promotional campaign that Comet had achieved a substantial share of market (Gov't Br. p. 16). The record tells quite a different story. Comet was a new product with improved cleansing properties. Consumer research had revealed that, with its distinctive characteristics, it was likely to be favor-

*Indeed, the one piece of evidence to which the Government can point, as referring in any way to the matter of Procter's independent entry, contains a recommendation *against* any such entry (CX 324, R. 150X, 582a, 1160a-1161a).

**The Government's brief lists some 27 familiar household brands and notes that these represent only a partial list of Procter's many products (Gov't Br. p. 10, n. 10).

ably received in the market (R. 563a). The type of introductory campaign with which it was introduced is customary for any new product in the grocery field (R. 541a, 556a). The Government points to a 22-month expenditure of $7.2 million dollars for such purposes.* It refers to this as though it had some sinister significance. But even though Comet was not an established product and did require introductory expenses, these total expenditures were less than Clorox Chemical spent during the same period to advertise and promote its product which had already achieved consumer acceptance on a national basis (RX 83, R. 453X, 1306a, *in camera;* CX 573E, R. 446X, 1151a, *in camera*). The Government's implications that the successful introduction of this new and improved product is illustrative of some overriding "market power" is contrived.

Likewise, despite the repeated references to Procter's overall financial resources, the evidence warrants no assumption that any of these resources would be put to use in the merchandising of Clorox, or that the resources of Clorox needed any supplementation from Procter. Nor is there anything to suggest that any such "available funds" would be used to engage in improper business practices. For, as the court of appeals observed (R. 1565):

> "There was no evidence that Procter at any time in the past engaged in predatory practices, or that it intended to do so in the future."

Certainly Procter is a large, successful and well-managed company. But this, standing alone, cannot be a predicate for the condemnation of its acquisition of Clorox. Yet, as we will establish, this is exactly what the Government is

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*Almost half of these expenditures was for consumer sampling, a customary procedure, where practical, in the introduction of new and improved products (R. 563a-565a; CX 573E, R. 446X, 1151a, *in camera*).

urging here, notwithstanding its protestations to the contrary.

5. The Liquid Bleach Industry

The Government's statement points up the relative ease of entry into the liquid bleach business (Gov't Br. pp. 5-6). It stresses the absence of any production barriers. From these facts, it assumes that if the industry was doctrinarily "competitive," it would include a number of producers, all of which would have approximately the same share of market (Gov't Br. p. 6). Noting, however, that here a limited number of firms account for the major share of total industry sales, the Government assumes that this fact provides some arbitrary rule of thumb by which the industry, regardless of any unique characteristics, can be deemed to be so "concentrated" as to be non-competitive (Gov't Br. pp. 6, 31).

This is an industry in which (1) there is an excess of productive capacity (R. 637a, 777a, 840a, 870a, 911a, 924a, 945a, 971a, 1015a, 1032a, 1070a); (2) freight charges limit the marketing area to a radius of approximately 300 miles from production facilities, and the merchandising of the product, including advertising and promotion, is regionally or locally oriented (R. 724a, 824a, 841a, 875a, 938a, 971a, 1004a, 1028a, 1054a, 1269a); (3) there are some 200 bleach producers, some large and others small, scattered throughout the United States (R. 1561); (4) the profit margins are unattractive because incremental production costs are low and capacity is excessive relative to demand (R. 739a); (5) intense price rivalry exists within the industry (R. 632a, 674a-675a, 807a, 811a-812a, 816a-817a, 851a-852a, 896a-897a, 905a, 1028a-1029a, 1068a, 1109a, 1241a-1242a, 1358a); (6) the increasing patronage of private brands sold through supermarkets has made bleach available to the consumer at decreasing prices (R. 669a, 732a, 905a, 921a-922a, 1248a-1249a, 1270a, 1343a, 1426a,

1472a; RX 69 A-Z, R. 320X-345X, 1225a; RX 78, R. 362X, 1289a). These are economic considerations ignored by the Government. They run counter to any assumption that price competition is, or is likely to be, lacking in the liquid bleach industry.*

Every inference to be drawn from these considerations is that the industry was effectively self-policing price-wise, and that any likelihood of new entrants had no part in controlling prices.

The foregoing was established by substantial evidence in the record before the court below. Undoubtedly these facts prompted, in part, the court's comment to the effect that the evidence did not establish that there was "anything unhealthy about the market conditions" (R. 1562). In no way can it be inferred, as the Government asserts, that this observation was a determinative factor in the court's decision (Gov't Br. p. 24). The issue before the court of appeals was not whether, in terms of economic theory, the industry was "good" or "bad" or whether it measured up to some analytical "model" of competition. The issue was whether this acquisition would bring about a lessening of existing, or prospective competition, in this particular industry.

Hence, the Government's case is not advanced by labeling this industry as a "concentrated" or "oligopolistic" one. Realities must outweigh the significance of "labels." Certainly Procter's acquisition resulted in no additional "concentration" within the industry. The number of competitors was not lessened, nor was there any change in their market position.

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*Typical of the Government's technique, it does not and could not claim that there is any evidence that in the liquid bleach industry, the competitors have adhered to the "easy life" or have adopted any "live and let live" policy (Gov't Br. p. 31). Rather it points to generalizations as to these attitudes with the unwarranted innuendo that such conditions exist in the liquid bleach industry.

6. Post-Acquisition Developments

In the post-acquisition period, there is no proof that the acquisition brought about any lessening of competition, or that there was any probability that it would. The market share of Clorox did slightly increase in the years following the acquisition. But its rate of growth was approximately the same, although slightly less than in the years preceding the acquisition (RX 134A, R. 399X, 1544a).* There is no showing that the acquisition had played any part in this.

As to the competitors of Clorox, the undisputed evidence is that in the years following the acquisition, they sold *more bleach* for *more money* than ever before (RX 137, R. 421X, 1547a). Not a single competitor testified that in the post-acquisition years his business had in any way been adversely affected. As the record so clearly shows, the continued competition of these competitors has been vigorous and successful.

7. The Nature and Import of the Two Decisions of the Commission

The Government's brief contains a passing reference to the circumstance that this proceeding has been the subject of two decisions by the Federal Trade Commission (Gov't Br. p. 3). In the interim between these decisions, the personnel of the Commission radically changed, so that only one Commissioner participated in both (R. 248a-249a, 388a-389a).

The Government notes that on the first appeal, the Commission reversed the findings and conclusions of the trial

*In the last of the post-acquisition years, the Clorox share of market declined for the first time in the history of the company (RX 134A, R. 399X, 1544a).

examiner and remanded the case for additional evidence, "holding that the record as then constituted was inadequate" (Gov't Br. p. 3). This conceals the real significance of this first decision. For the "inadequacy" to which the Government refers, was actually a direct determination by a unanimous Commission that the examiner's conclusions respecting a violation of Section 7 were not supported by the evidence. As stated by the court of appeals (R. 1559), the Commission held that:

> "[T]he evidence was insufficient to support a finding of illegality."

Thereafter, and in the course of a second appeal, the findings and conclusions of the first Commission were rejected by a new body of Commissioners (R. 1567-1568). The primary importance of this is that the decision of this second Commission was based on the *same record* as had been passed upon by the first Commission. As the court of appeals said (R. 1559):

> "The second Commission's decision was based entirely on the record submitted to the first Commission, which that body had ruled to be insufficient to support a finding of illegality."

This gives rise to the unique circumstance, completely ignored in the Government's brief, that the two Commissions are in irreconcilable conflict. They are in complete disagreement respecting the conclusions to be drawn from the same record. Thus, it cannot be said that here there is any decision by the Commission which reflects any consensus of Commission "expertise" or "informed" Commission judgment.

Summary of Argument

1. The decision of the court of appeals that the Commission's conclusions were not supported by substantial evidence was compelled on the record here.

The lower court adhered strictly to the teachings of this Court in passing upon the controlling issue of the probability of a substantial lessening of competition,* and in its application of the substantial evidence standard. After a thorough factual review, the court below found the record as a whole insufficient to support the Government's theories of illegality. The primary authority to review agency findings has been entrusted to the courts of appeals by Congress and no circumstances are present here which warrant disturbing the decision below.

2. Procter was not a potential competitor in the liquid bleach industry. Initially the Government contends that Procter, itself, was a likely entrant whose competition has now been foreclosed. Not only is there no evidence to support this claim, but, indeed, the only evidence bearing on the subject is to the contrary. Tested by this Court's standdards for the determination of likelihood of independent entry, the Government's claim is shown to be an untenable afterthought.

Attempting to discount the infirmities of its claim that Procter was a probable independent entrant, the Govern-

*The initial inquiry in every Section 7 case is whether an acquisition may have the probable effect of lessening competition. In the typical horizontal and vertical merger settings a lessening of such competition is automatic. It remains only to evaluate its substantiality. In conglomerate mergers, such as the one here in issue, these automatic effects are absent. There has been only the substitution of one competitor for another. So, in challenging any such acquisition, the enforcement agencies have the dual burden of establishing (1) the probability that competition will be lessened by reason of the acquisition, and (2) that such lessening will be substantial.

ment asserts, alternatively, that regardless of any such probability (or the absence of such) Clorox Chemical must have regarded Procter as a potential entrant. It speculates that marketing activities of Clorox Chemical, particularly in the area of pricing, were influenced by a concern that Procter might become a competitor.

At no time during the trial proceedings did the Government attempt to elicit any evidence from anyone to support this theory. In place of evidence, the Government substitutes economic generalities respecting the structure of the industry. Notwithstanding the Government's theoretical criticisms, there is nothing in this record which indicates that pricing policies in the pre-acquisition industry were dictated by any consideration other than competition within the industry.

3. The acquisition did not result in the enhancement of Clorox's market position so as to result in any probable lessening of actual or potential competition.

Throughout the entire trial stage of these proceedings the thrust of the Government's claim was that *actual* competition would be substantially affected by the acquisition. This claim has gradually faded into the background. In this Court the Government has elected to proceed primarily, if not entirely, upon the equally fallacious claim that, as a result of the acquisition, potential competition has or will be lessened.

The Government's claims of anti-competitive effects are based upon so-called "competitive advantages." These claims have now been narrowed almost exclusively to the area of advertising and promotion. In this area, it is asserted that the financial resources of Procter would enhance Clorox's "power" and, in addition, would result in economies realized by volume discounts.

But the record shows that Clorox needed no assistance, financial or otherwise, from Procter in its advertising or

promotion or elsewhere. And the evidence shows that these alleged "competitive advantages" are either non-existent, theoretical, or without competitive significance.

Further, the post-acquisition evidence introduced on the remand of the proceeding by the order of the first Commission—and ignored by the second Commission—is wholly incompatible with the Government's theories. It shows that the acquisition has resulted in no adverse effects upon existing competition. To the contrary, the competitors of Clorox are prospering as never before.

4. There is nothing before this Court to lend credence to the assumption that Procter's mere presence in the industry will deter entry by others. The claim is predicated upon possible deterrent effects stemming from Procter's size. Again, there is not the slightest support for it in the record.

Likewise, the Government's assumptions as to the existence of a "class" of prospective entrants, and as to why, or in what respect, any of them would be interested in entry, or deterred from entering, are premised solely upon surmise and conjecture.

In respect of all these claims as to the deterrence of "potential competitors," the Government concedes that its basic theories have never been explicitly recognized by this Court in any of the decisions involving Section 7.

We maintain that, in essence, the Government is asking this Court to sanction the invocation of Section 7 on the basis of assumption and speculation. It seeks a standard which would relieve the enforcement agencies of the requirement that violations must be established by substantial evidence. This is nothing other than an attempt to have these agencies endowed with the power to make arbitrary and non-reviewable determinations of transgressions of the statute.

ARGUMENT

I

THE COURT OF APPEALS PROPERLY DISCHARGED ITS REVIEWING FUNCTION—ITS DECISION SHOULD BE AFFIRMED

The decision of the court of appeals, predicated upon a comprehensive consideration of the whole record in this case, turned upon one ultimate finding (R. 1569):

> "Considering the record as a whole, we are of the opinion that the decision of the second Commission is not supported by substantial evidence. *Universal Camera* v. *N. L. R. B., supra.*"

All that has been written by this Court over the years, respecting the function and responsibility of the appellate court in the review of decisions of administrative agencies, compels that the utmost significance must attach to the decision below.

Understandably, the Government prefers to brush aside this decision. It adopts a disdainful, patronizing attitude towards the court's opinion. It seeks to discount it with broad generalizations that the court below "misapprehended" the controlling issues here (Gov't Br. pp. 25, 30).

This will not do. This Court's decision in *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U. S. 474, which the Government does not even deign to acknowledge, cannot be so cavalierly and summarily disregarded.*

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*The essence of that holding (concurred in by a unanimous Court) is contained in the following passages from the opinion (*Id.* at 490-91):

> "Congress has imposed on [reviewing courts] . . . responsibility for assuring that the Board keeps within reasonable

And in pointing to the applicability of the doctrine enunciated in that case, we are not suggesting that it represents any inexorable, unyielding limitation upon the reviewing power of this Court. We do strongly urge, however, that some clear showing is required that the court below made either an inadequate review of the record, or flagrantly misapprehended the issues involved, before its rulings respecting the substantiality of evidence should be disregarded.

As is apparent from its opinion, the court below made a thorough and conscientious review of the very extensive factual record in this proceeding. We do not understand that the Government questions the adequacy of this review.

The legal standards which the court applied followed the teachings of this Court and were stated as follows (R. 1566):

> "In a Section 7 case it is necessary to determine whether there is a reasonable probability that the merger may result in a substantial lessening of competition.
>
> "Amended Section 7 was intended to arrest anticompetitive tendencies in their incipiency. *United States* v. *Continental Can Co.*, 378 U. S. 441 (1964); *United States* v. *Philadelphia Nat'l Bank, supra;*

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grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals . . . .

* * *

"Our power to review the correctness of application of the present standard ought seldom to be called into action. *Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals. This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied.*" (Emphasis added.)

Brown Shoe Co. v. *United States, supra.* A mere possibility is not enough, *United States* v. *E. I. DuPont deNemours & Co.*, 353 U. S. 586 (1957); nor is certainty required, *United States* v. *Penn-Olin Chem. Co.*, 378 U. S. 158 (1964)."

Again the Government does not and cannot take issue with these standards. And the court also recognized that they were as applicable to conglomerate mergers as to all others. Then the court evaluated the record in terms of whether there was substantial evidence to support the Commission's conclusions in respect of the controlling standards. This was exactly what the Government urged that it should do.*

Having lost, the Government now seeks to escape the impact of the decision below by saying that it really did not turn on an evaluation of the evidence. It says that "the court of appeals . . . quarreled not so much with the substantiality of the supporting evidence as with the Commission's underlying theory" (Gov't Br. p. 30). This is pure sophistry. The court below neither misconceived nor rejected these so-called "theories." Rather, it reviewed the record in the light of these theories of illegality and found that there was no substantial evidence to warrant their application here.**

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*In its brief in the court below the Government framed the controlling issue as:

> "Was the Commission's holding that Procter's acquisition of Clorox Chemical violated Section 7 supported by substantial evidence and in accordance with law?" Brief for Respondent, No. 15, 769, p. (1).

**No elaboration is required of the principle that decisions of administrative agencies can not be upheld unless based upon "reliable, probative and substantial evidence." 5 U. S. C. § 1006(c). Any decision "unsupported by substantial evidence" on the record as a whole must be set aside as unlawful by the reviewing court. 5 U. S. C. A. § 1009(e); Universal Camera Corp. v. National Labor Relations Board, 340 U. S. 474, n. 484, 488.

Thus, in setting aside the Commission's conclusions as to the probability of Procter's independent entry, the court below predicated its decision entirely upon its review of the evidence. Likewise, its holding that the Commission had failed to sustain its contentions as to any actual or probable anti-competitive effects upon existing competitors, was based upon its examination of the facts bearing upon these claims. Its decision that no lessening of competition was probable because of any alleged "competitive advantages" turned upon its findings of the inadequacy of the pertinent evidence of record.

Further, we think it plain that the court below regarded these rulings as to the insufficiency of the evidence to be equally applicable to the Government's claims respecting effects upon imaginary "potential competitors." These claims were raised and argued in the court of appeals, and were necessarily encompassed within its decision. The utter lack of any evidentiary support for these speculative possibilities made any specific comment by the Court unnecessary and superfluous.

For there was nothing in the record to support any assumptions as to the existence of any prospective entrants, or as to any conditions which would attract new entry, or as to any valid reasons why Procter's acquisition would deter any new competitor whose entry might be deemed likely. Thus, as to this aspect of the case as well, the decision below, setting aside the Commission's conclusions, was based upon the lack of evidentiary support for them, rather than any rejection of the "theories" advanced by the Government.

What is attempted here is to secure, by treating the decision below as a meaningless formality, a *de novo* review of the record by this Court. Linked to that is the effort to have this Court sanction standards respecting the application of

Section 7 which go beyond the announced and accepted reach of the legislation. They are standards which would endow the Federal Trade Commission with the power to arrive at arbitrary determinations of illegality, regardless of any substantial evidentiary support therefor. They should be rejected here as they were in the court below.

II

PROCTER WAS NOT A "POTENTIAL COMPETITOR" IN THE LIQUID BLEACH INDUSTRY

The Government's contention that Section 7 was violated because the challenged acquisition removed Procter as a "potential competitor" in the liquid bleach market (Gov't Br. pp. 27, 39, 49) cannot be sustained or supported on the record here. The conclusion of the court of appeals that (R. 1568),

> "There was no reasonable probability that Procter would have entered the household liquid bleach market but for the merger,"

was compelled by the record and by the decisions of this Court which have dealt with this issue. Certainly, in the context in which the Government's claim is advanced, this issue of "reasonable probability" is decisive. And this Court has recently noted that such "probabilities" respecting "potential competition" and the probable effect of its elimination must be established "by evidence in the record." *United States* v. *Penn-Olin Chemical Co.*, 378 U. S. 158, 175-176.

What the Government seeks here is a ruling which would relieve the enforcement agencies from the requirement of establishing, by *substantial evidence*, that a possible competitor *probably* would have entered the market on its own.

A. Procter Was Not "Interested" In Entering the Liquid Bleach Market On Its Own.

In an effort to support its assumptions as to Procter's likely entry, the Government has sought to create the illusion that there is evidence in this record to support such a probability. The Government's brief contains numerous statements to the effect that Procter had "studied" and "carefully considered" entering the liquid bleach business on its own (Gov't Br. pp. 17, 24); that it had "pondered" such entry and had the "incentive" to engage in the business (Gov't Br. pp. 27, 39, 49). After a repetition of such phrases the final assumption is uttered that "Procter was clearly interested in entering the bleach industry" (Gov't Br. p. 51).

All of this is an irresponsible distortion and misrepresentation of the record. For neither rhetoric nor repetition can conceal the fact that on this record there is not one iota of evidence that Procter had ever evinced any interest in independent entry. Nor is there, we emphasize, any evidence as to why it might go into the industry.

(1) As to Procter's alleged "study" or "pondering" of entry or any "incentive" to do so.

As we have earlier noted, the Clorox stockholders first initiated negotiations with Procter for the sale of their business in 1955 (Statement, *supra*, p. 6). Although the liquid bleach industry had been in existence for a half a century, there is no evidence of any kind that, prior to this time, Procter had any interest in getting into that business. During the course of these 1955 negotiations, an employee in Procter's promotion department wrote a memorandum analyzing the economics of a purchase by Procter of the Clorox business, concentrating particularly on what would be a reasonable price (CX 324A-D, R. 150X-153X, 582a).

In evaluating its worth, he made an estimate, solely for comparative purposes, of the likely cost of independent entry into the business. This estimate patently was not prompted by any such intent to enter on the part of Procter.

The negotiations which had occasioned this memorandum proved fruitless and no agreement was reached. Two years later, in 1957, the Clorox stockholders reopened negotiations with Procter. There is not even a suggestion of any evidence that Procter had, in the interim, any interest in entering the business. Nor is there any suggestion that anything had occurred which would have stimulated any such interest. Again, an employee in Procter's promotion department wrote a memorandum respecting his estimate of a fair price for the Clorox business. This writing contains no mention of anything pertaining to independent entry by Procter. It concludes that the asking price would be "acceptable" (CX 323A-C, R. 147X-149X, 582a).

Here, then, are the only two pieces of evidence to which the Government can point as even having any remote bearing on the question of Procter's entry. It is this material which the Government has tortured into claimed support for the assertion that Procter had made a two-year study of entry (Gov't Br. p. 17).

Compounding its distorted characterizations of these memoranda, the Government makes only passing reference to the fact that in the single instance where mention was made of the cost of independent entry, there was the recommendation *against* entry by Procter on its own. Commission's Exhibit 324 states (R. 150X-153X, 582a):

> "We would *not* recommend that the Company consider trying to enter this market by introducing a new brand or by trying to expand a sectional brand." (Emphasis added.)

It is, indeed, something of a paradox that, as proof of the likelihood of Procter's entry, the Government has been forced to rely upon a report which flatly recommends that it not go into the field.

That the record contains no direct proof bearing upon this claim as to Procter's entry stems partly, at least, from the fact that this contention was first advanced by the Government as a labored after-thought—long after the record in this proceeding was closed. The Commission's complaint contained no claim that Procter itself was a potential entrant (R. 15a-27a). At no time during the course of the protracted trial proceedings was any such contention advanced. No claim was ever made that the two exhibits, now relied upon by the Government, were ever introduced to show some likelihood of Procter's entry. Not until the case was before the Commission in the course of a second appeal, did it inject this contention *sua sponte*.

Hence, no evidence was adduced respecting any likelihood of Procter's independent entry, and in no way has the Government sustained its burden of establishing such a likelihood by substantial evidence. But even more repugnant to Procter's rights is the circumstance that it had no opportunity to introduce evidence respecting this unasserted claim; no opportunity to demonstrate why the nature of the business and the economics involved made independent entry unattractive and altogether unlikely.*

Thus the Government's contention in respect of this point comes down to assuming that because it says that

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*The failure of the Commission to inform Procter prior to the close of the record that any such claim would be asserted, and the weight the Commission attached to it (See dissenting opinion of Commissioner Elman in General Foods Corp., FTC Dkt. 8600, 3 CCH 1966 TRADE REG. REP. ¶ 17,465 at 22,746), were, we submit, a violation of Section 5 of the Administrative Procedure Act (5 U. S. C. A. § 1004(a)(3)).

Procter was a "large multi-product firm" with adequate resources to enter the business on its own, and because liquid bleach was used in washing machines and was marketed through self-service grocery stores, it can pontificate that Procter was, in fact, a probable entrant. This sort of baseless speculation will not do as a substitute for substantial evidence.* As we will later show, this Court has said that it will not do. The court of appeals noted (R. 1568):

> "Household liquid bleach is an old product; Procter is an old company. If Procter were on the brink it is suprising that it never lost its balance and fell in during the many years in which such bleach was on the market. It had never threatened to enter the market. *Cf. United States* v. *Penn-Olin Chem. Co., supra,* at 173."

In addition, the glaring inadequacy of the record is emphasized by the following:

a) There is no showing that there had been any developments in the industry which would make Procter's entry more likely than it had been in the past.

b) There is no evidence that there had been any expanding uses or new markets for the product.

c) Far from there being any evidence that existing facilities were not adequate to supply existing and prospective demands for the product, such evidence as bears upon this is to the contrary (Statement, *supra,* pp. 9-10).

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*Nothing is added to this speculation by the fact that before the acquisition, Procter had diversified its operations through the acquisition of product lines in which it had never previously engaged (Complaint and Answer, Par. 7, R. 19a-20a, 31a-32a) and by its own introduction of improved products which it had previously marketed (R. 555a, 560a, 563a; Answer, Par. 13, R. 35a).

d) There is no showing or suggestion of any technological break-throughs or developments which would make entry more attractive.

e) There is no proof that Procter's facilities could or would be used in the manufacture or distribution of liquid bleach.

f) There is no evidence that the profit levels for this low-price product would warrant the commitment of Procter's resources to independent entry, rather than to the utilization of them in more profitable fields.

Yet these are the considerations which, in any realistic approach, would control the judgment of business men respecting entry into any new business. We say that it is inconceivable that, on a record which is barren as to these factors, this Court would confirm the validity of the Govment's assumptions. And certainly any such determination would run counter to standards heretofore established by this Court.

(2) The Government's contentions run counter to applicable decisions of this Court.

The Government acknowledges that the Section 7 significance of a merger involving a "prospective entrant" into a market "has received explicit recognition in the decisions of this Court" (Gov't Br. p. 34). We agree. But we maintain that that "explicit recognition" demonstrates that no Section 7 violation on this score has been shown here.

Indeed, the Government, while paying lip service to these prior decisions, is cavalierly disregarding their teachings. It is seeking to thrust upon this Court a new standard of illegality. In scope, it would enable the enforcement agencies

arbitrarily to invalidate all conglomerate mergers involving a company with large resources—particularly if it could be said that the company might have "some interest" in entering a particular field, however unlikely or improbable such entry might, in fact, be.

We first point to this Court's most recent decision involving the claim that a "potential competitor" had been eliminated from the market. *United States* v. *Penn-Olin Chemical Co.*, 378 U. S. 158. The plain effect of that decision represents a rejection of the Government's position here. In reality, its position is tantamount to asking this Court to overrule its decision in that case.

For the evidence deemed insufficient in *Penn-Olin* respecting the probable entry of the joint venturers into the market was manifestly more direct and specific than anything in the record here. This Court there noted that each of the joint venturers "had compelling reasons for entering" the relevant market; that "the industry was rapidly expanding;" that each company "had evidenced a long-sustained and strong interest in entering the relevant market area;" and that each company "had the know-how and the capacity to enter that market and could have done so individually at a reasonable profit" (378 U. S. at 174-175). Even so, said this Court, these circumstances were not conclusive in establishing that a potential competitor had been eliminated in the Section 7 sense. But here, there is no showing that even these ingredients, which the Court held inadequate in *Penn-Olin*, were present.

Moreover, if the Government's theory here reflects the ambit of Section 7, there would have been, in *Penn-Olin*, no reason or purpose for this Court to remand the case for further findings as to the probability that one or the other of the joint venturers would have entered the market.

Again, we say, that the Government's objective here is to have this Court set aside and disregard its *Penn-Olin* decision.*

This Court also directly dealt with this issue in *United States* v. *El Paso Natural Gas Co.*, 376 U. S. 651. The rationale of that decision also requires the rejection of the Government's claims. For this Court there extensively noted the points which were decisive: The acquired company was in the same business as the acquiring company (376 U. S. at 653). Not only was it interested in entering the market of the acquiring company but it had taken every possible step to make its entry into that market possible (376 U. S. at 654-655, 660-661). What is more, the record there showed that the overt activities of the acquired company, in attempting to enter the market, had demonstrably affected competition (376 U. S. at 658-659). Among other things, they had actually forced the acquiring company to reduce its price in California (376 U. S. at 654-655, 658-659). None of these factors are to be found in the record in this case.

Yet if the philosophy voiced here by the Government reflects the law, there was certainly no reason for this Court to consider and stress the significance of these factual considerations.**

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*If the Government is not asking that this decision be overruled, then—in all candor—it should ask that it be followed. This, of course, would require it to acknowledge that this proceeding should be remanded for evidence in respect of this issue.

**The Government's effort to twist this Court's decision in *Continental Can* into a holding that the mere "possibility" of entry is enough to warrant the attribution of the status of a "potential competitor" to an acquiring company, is to no avail. United States v. Continental Can Co., 378 U. S. 441. There, this Court noted that in certain segments of the container business the acquired and acquiring companies were definitely competitors in respect of promoting the end use of their products (378 U. S. at 453-455). The word "possibility," to which the Government refers, was used by this Court with reference to the possible extension of the existing interchangeability of the

Thus, we maintain that this Court has authoritatively delineated the standards which are controlling on the issue of whether an acquiring company is a potential competitor so as to render an acquisition by it invalid under Section 7. And those standards are as applicable and appropriate to a conglomerate merger as to one which bears any other label. They are plainly not satisfied here.

Moreover, the standard which the Government here sponsors would make a mockery of the requirement of substantial evidence. It would substitute the Commission's guesswork, in lieu of evidence, as to those factors which control business management in any decision to enter or not to enter a new product field. No such "theory of illegality" is warranted by the legislation, or is consonant with the decisions of this Court.

B. The Claim That the Policies of Clorox and Other Competitors in the Liquid Bleach Industry Were Influenced or Controlled by the Possibility of Procter's Independent Entry Is Without Any Evidentiary Support.

The Government's second charge as to the effect of the acquisition upon competition is also a product of abstract theory unrelated to any evidence in this record. It proceeds from the assumption that the pricing policies of Clorox must have been influenced by some "fear" of Procter's entry (Gov't Br. pp. 50-51).

In pressing this point the Government "plays down" the significance of its own effort to demonstrate that Procter was a "likely" entrant. It now says that this is of relatively little importance. It says that what really matters is what Clorox *thought* Procter's intentions were (Gov't Br. pp. 28-29). In analyzing these "thought processes,"

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products of the competing companies (378 U. S. at 465). In no sense did this Court indicate that the "mere possibility" of entry can stamp a company as a potential competitor in the Section 7 sense.

the Government deduces that the possibility of Procter's entry "must surely have figured as a palpable restraint on Clorox's conduct" (Gov't Br. p. 27).

At the outset we ask: What is there in this record which supports any such deduction? The Government's brief contains not a single citation to it. And, indeed, none could be culled from it. Instead, this Court is being importuned to predicate a judgment respecting this contention upon generalizations contained in economic literature, upon references made in other cases as to the impact of "potential competition," and upon colorful characterizations which derive from sheer speculation and hypothesis.*

The Government asserts, for example, that Clorox "surely" regarded Procter as a probable entrant (Gov't Br. p. 51). But disregarding the absence of any evidence to establish this, there was no reasonable ground for even the most "skittish" manufacturer of bleach to work up any anxiety as to Procter's intentions. As we have said, for over fifty years Procter had given no indication of any interest in the industry, let alone of any intention to enter. In the light of this background, any imagined "concern" on the part of Clorox would be wholly without foundation or reason. Indeed, the only permissible inference is that it was non-existent.

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*Thus, throughout its brief we are treated to a series of observations which, on their face, show that they are nothing more than reflections of surmise and guesswork on the part of the Government. For example, it is said that "Clorox *apparently* refrained from making conditions in the industry attractive enough to induce Procter" to enter (Gov't Br. p. 51); that the *possibility* of Procter's entry *"could not have failed"* (Gov't Br. p. 39) to induce Clorox and its competitors to "exercise self-restraint in pricing their brands" (Gov't Br. p. 39); that *"evidently,* Clorox's price was low enough to discourage entry by a firm, like Procter, which *undoubtedly* has a high target rate of return" (Gov't Br. p. 51); that "Clorox had an *incentive* not to engage in the kind of conduct that would have made entry attractive to Procter" (Gov't Br. pp. 28-29). (Emphasis added.)

All of these *ipse dixits* may reflect interesting intellectual exercises, but not a single one of them is supported by a word of evidence.

It is only reasonable that if there were any factual support for the Government's assumptions, it should have been reflected in some way during the long course of the trial proceedings. The Commission had access to all of the Clorox records. It offered no documentation of even the remotest "concern" of the Clorox management about, or any interest in, how, or in what manner, Procter would react to its merchandising policies. The Clorox officials testified and were interrogated at great length. There was nothing in any of that testimony that indicated that their activities had in any way been dictated or affected by any "thoughts" that Procter might independently enter the industry. There is likewise no such indication in the testimony adduced from competing bleach manufacturers. And, here again, the failure of the Commission to raise any such issue until after the record was closed effectively precluded Procter from responding to it. It effectively denied Procter the opportunity to expose this contention for the improvisation that it is.

Finally, all of the Government's theorizing about price levels in the industry and the reasons for these levels is pure speculation. It stems from the Government's professed dislike of competitive conditions in the liquid bleach business. Despite these theoretical criticisms, there is nothing in the record to indicate that existing competition was not sufficiently effective to keep prices at competitive levels.* Thus, we say, that the claim that Procter "in absentia" exerted some psychological restraint upon existing competition, dissolves in a vacuum of evidentiary support.

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*The efficacy of existing competition in policing price levels in the industry is well documented in this record. For example, in 1958, in connection with testing a new container in the Buffalo and Atlanta markets, Clorox increased the per case price by 10 cents. The substantial sales loss to its competitors compelled it, some six months later, to reduce the price to its former level (R. 1109a, 1241a-1242a; RX 129, R. 397X, 1519a).

III

THERE IS NO PROBABILITY THAT ACTUAL OR POTENTIAL COMPETITION MAY BE LESSENED OR ADVERSELY AFFECTED BY ANY ENHANCEMENT OF THE "MARKET POWER" OF CLOROX

The Government also claims that this acquisition violates Section 7 because the substitution of Procter for Clorox may deter "prospective" competitors from entering the bleach industry. It argues that the "salutary" effect of potential new entrants (as a curb upon possible anti-competitive practices in the industry) may be diminished, and the prospect of possible new entries into the business may be lessened (Gov't Br. p. 52).

The Government's position is premised upon its claim that alleged "competitive advantages" stemming from the acquisition will so enhance the "market power" of Clorox as to increase substantially the barriers to new entry (Gov't Br. p. 38). As a corollary to this, it also urges that such "advantages" may have some imagined "chilling" effect upon the future competitive activities of actual competitors (Gov't Br. p. 52).

We first consider the nature and significance of these so-called "advantages." For whatever may be their import in a Section 7 proceeding, if they are non-existent or of no competitive significance, as we now demonstrate, the Government's position is fatally undermined.

A. The Alleged "Competitive Advantages" Upon Which the Government Relies Are Demonstrably Without Competitive Significance.

The thrust of the Commission's complaint and the shaping of its proof throughout this proceeding was directed to its claims respecting the effects of these so-

called "competitive advantages." To this end, the Commission inquired into all phases of the operations of both Procter and Clorox. The futility of its inquiry is reflected by the successive abandonment of most of its claims in this respect.

Thus, no claim is now made that the acquisition conferred upon Clorox any so-called "advantages" in the manufacture or production of liquid bleach. Also abandoned by the Government is the assertion that the distribution of Clorox through independent brokers would be discontinued and Procter's sales force utilized in its stead.* Even though passing reference is made by the Government to the importance of shelf space in the merchandising of consumer products (Gov't Br. pp. 15-16), no claim is made that Clorox would now be "advantaged" in this respect.** Lastly, there is no suggestion that Procter's merchandising ability and experience will "advantage" Clorox in any way.***

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*There is nothing in this record upon which to base any judgment as to which method of distribution is more economical or more effective. As to any likelihood that Procter would make any change in the distributional method for Clorox, Procter's President testified that distribution through brokers was effective, that it had been successful for the Clorox brand and that there were no plans to abandon it (R. 608a).

**The only objective evidence bearing upon this subject shows that "pre-merger Clorox" had a larger percentage of shelf space in relation to product movement than did Comet—Procter's most successful and only product in the scouring cleanser field (R. 1330a-1331a). The court of appeals observed that Clorox on its own had achieved "very adequate shelf space" prior to the acquisition (R. 1564).

As to any suggestion that because Procter is a multi-product company, more favorable shelf space could be secured by it for the products which it sponsored, this was emphatically denied by the retailers who testified (R. 1195a, 1296a).

***The President of Procter testified that even though Procter may be competent in its own field to build up a brand, it had not shown anything like the competence of Clorox Chemical Co. (R.

Thus, as is now apparent in the Government's brief, the so-called "competitive advantages," which it claims proscribe this acquisition, come down to two: (1) that Clorox will have available greater financial resources which, among other things, it is said will enable it to engage in more extensive advertising and promotional activities; and (2) that Clorox will be advantaged by an alleged ability to achieve cost advantages by reason of advertising discounts and economies in promotional costs.

We submit that the record demonstrates that these claimed "competitive advantages" are either entirely imaginary or improbable or without competitive signficance.* Any analysis of them merely emphasizes that underlying the Government's claim is its assumption that illegality can be predicated upon the "size" of Procter.

(1) As to the availability of additional financial resources.

In its brief, the Government has considerably tempered its previously asserted claims that the "availability" of Procter's overall financial resources "advantaged" Clorox in such a way that anti-competitive consequences were probable. The emphasis now is that access to such resources relieved Clorox of alleged budgetary limitations which had restricted the company, pre-merger, in its advertising and promotional activities (Gov't Br. pp. 26, 39, 40).

567a-568a). In support of this conclusion, he pointed out that Clorox, at the time of the acquisition, had a higher share of the market than any product that Procter then had (R. 1104a-1105a). As noted by the court of appeals, it was Clorox, and not Procter, which had the "know-how" in the household liquid bleach business (R. 1562-1563).

*There is no suggestion that such "advantages" made possible any of the congeries of recognized anti-competitive practices. *Cf.* Federal Trade Commission v. Consolidated Foods Corp., 380 U. S. 592, 594. There was no evidence that Procter or Clorox at any time in the past engaged in predatory practices. Nor is there any suggestion that Procter would be likely to do so in the future (R. 1565).

Absent such limitations, the Government urges that now Clorox would be able to meet any challenge from new entrants (Gov't Br. p. 39). This is simply a further embellishment of the theme that anti-competitive effects may be presumed from the "size" of Procter. No premise for such speculation may be garnered from this record. Apart from the lack of any evidence to support the Government's hypothesis, the record is clear that Clorox Chemical Co. had more than ample financial resources to meet any realistic competitive requirements (R. 523a, 1565; Gov't Br. p. 4). Its financial self-sufficiency in the bleach industry was noted by the court below (R. 1563):

> "The finances of Clorox, although not comparable with Procter's, were entirely adequate for its purpose and enabled it to continue its growth and to maintain and increase its share in the market."

Nor is there a scintilla of evidence in this record that the merchandising policies of Clorox Chemical were restricted in any respect by budgetary limitations. The Government's assertions to the contrary erroneously assume that expenditures for such activities are subject to no limitations except the availability of funds. Such an assumption reflects the Government's total disregard and misconception of the manner in which American business operates. Expenditures made by management for advertising and promotions, like any other investment, must result in a reasonable profit return or management will not long survive.

In every real sense, the only limitations imposed on pre-acquisition expenditures for advertising and promoting Clorox were the policy determinations of its management. At the time of the acquisition, the optimum per case rate expenditure for advertising and promotion had been established through years of operating experience. It effectively

served the advertising and promotional needs of the brand (R. 1379a-1384a). That rate was regarded by management to be the most economical utilization of funds in terms of profit return (R. 1381a-1382a).* The rate remained the same in the year following the acquisition and there is nothing in the evidence to indicate any likelihood of change (R. 1305a-1308a, 1310a-1312a; RX 83, R. 453X, 1306a, *in camera*). In fact, the testimony was to the effect that there would be none (R. 1382a; see also R. 546a-547a). The evidence permits of no inference that additional advertising would be purchased simply because additional funds could be said to be "available." The conclusion is directly to the contrary.

It was to this very point that the court of appeals directed itself when it stated that "doubtless Procter could advertise more extensively than Clorox, but there is such a thing as saturating the market" (R. 1563).

(2) As to so-called promotional and advertising economies.

Possible cost savings in advertising and promotional activities, as a result of the acquisition have been, on the basis of this record, magnified and distorted beyond any permissible limits. And it is these "advantages" which represent the primary reliance of the Government in support of its claims of anti-competitive effects.

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*The Commission, in assuming that expenditures for advertising and promotional activities might be increased, did pay passing reference to the reality that there is a point of diminishing return in such expenditures. In its opinion, it stated "moreover, the effectiveness of advertising and sales promotions would appear to increase, *at least up to a certain point*, in direct proportion to their volume" (R. 420a). (Emphasis added.) The significant language in the quotation are the words "up to a certain point." While carefully hedging the breadth of its basic assumption by these words, the Commission wholly ignored the testimony to the effect that such a point had been reached in the marketing of the Clorox brand.

(a) *As to multi-product promotions.* The Government's brief asserts that joint promotions reduce "the mailing, printing and other costs of the promotion for each product" (Gov't Br. p. 14). We know of no evidence in the record to support such an assertion and no clue to the existence of any such evidence is provided in the Government's brief.*

Moreover, the Government's presentation contains a misstatement of the evidence. For in its brief it states, without qualification, that "since the merger the Clorox brand has been featured in sales promotions in combination with other Procter products" (Gov't Br. p. 43). Again there is no reference to any record support for this assertion. So far as any multi-product merchandising of Clorox is concerned, the only evidence bearing on the subject was that Clorox would have little to gain—and might have something to lose—through the diffusion of its advertising impact and image if it were promoted in conjunction with other national brands (R. 1389a-1390a; see also R. 746a).

(b) *As to advertising discounts.* The gist of the Government's claim respecting "substantial new competitive advantages" is that the acquisition will enable Clorox to obtain large volume discounts in network television program advertising (Gov't Br. pp. 12, 26, 41). Reference is made to discount schedules allegedly permitting discounts of 25 to 30% on the sponsorship of network television *programs* (as distinguished from the purchase of television

*If the Government's argument is that two coupons can be mailed in one envelope and thus result in the sharing of the cost of a postage stamp, it is probably correct. Any cost savings in this regard, however, certainly cannot be deemed of sufficient significance to warrant consideration as a basis for invalidating an acquisition.

Nor could any such savings be deemed a "competitive advantage," because the competitors of Clorox are able to do the same thing in a joint promotion of their product with the products of other companies. In that way, they too can "split the postage" (R. 1020a).

spots).* The Government argues that before the merger Clorox was unable to qualify for such discounts (Gov't Br. p. 40). Hence it implies that Clorox advertising policies will now be dictated and shaped by their availability.

In this "discount-minded" society, the Government's argument might have surface appeal to the uninformed layman. But the argument ignores practical, commercial considerations. To a knowledgeable advertiser, the choice of appropriate advertising media for a product is not controlled by the availability of advertising discounts, but rather by the requirements of the product and the desirability of obtaining the proper media structure (R. 552a).**

Here the facts are that Clorox Chemical Co. did not use, nor does Procter use, nor is there any evidence indicating that Procter intends to or might use, network television in advertising liquid bleach (R. 550a, 699a, 1396a-1397a,

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*The discounts to which the Government refers apply only to *time* charges in connection with the sponsorship of a TV program (R. 551a). There are no discounts on "talent" charges which are approximately equal to time charges (R. 551a, 779a-780a). Hence, the discounts available for any given program would be, at most, approximately one half the amount referred to in the Government's brief (R. 551a, 779a-780a). Moreover, discounts varied from network to network and there is a wide difference in the discount schedule for nighttime and daytime network television (R. 778a).

**The Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, United States Senate, 89th Cong., 2nd Sess., recently conducted hearings on *"Possible Discriminations in TV Advertising."* Reference is made in the Government brief to hearings before this Subcommittee (p. 30 n. 26). One of the witnesses was Don Durgin, the President of the NBC Television Network. He testified that the great majority of his largest advertisers spent considerably more money for "non-discount" than for "discount" time. (December 14, 1966, pp. 685-686). With reference to the Government's assertion in footnote 12 at page 12 of its brief that smaller advertisers paid "40 to 60 percent more" than the largest advertisers for "identical coverage," Mr. Durgin testified that as between the ten largest and the ten smallest advertisers, the smallest advertisers' average costs were less per thousand households (December 14, 1966, p. 689).

1432a-1433a). The reason for this had nothing to do with advertising discounts or financial resources. Very simply, Clorox Chemical Co. and Procter—as a matter of business judgment on the part of management and the Clorox advertising agency—believe that spot television is the preferable media for advertising Clorox liquid bleach. This is because of its flexibility, which permits adjustment of the advertising weight to be given to Clorox in particular areas (R. 1396a-1397a, 1432a-1433a).

Plainly, the Government's characterization of prime time sponsored network television programs as the "principal media" (Gov't Br. p. 41) for advertising liquid bleach is at odds with the evidence.* Not only is the record clear that Clorox did not use any such media, but there is no evidence from which it might be concluded that it was reasonably probable that it would.

Finally, and perhaps most importantly, in the light of the Government's harping upon the matter of these network discounts, is the fact that they have been, or are being, discontinued.** In hearings before this same Senate Subcommittee on Antitrust and Monopoly, 89th Congress, Second Session, which is cited in the Government's brief (p. 30), Mr. Durgin, President of NBC, testified that NBC was eliminating all volume discounts (December 14, 1966, page 683). In other Congressional hearings, representatives of CBS and ABC testified that such discounts had been or were being eliminated (Hearings, Select Committee on Small Business, House of Representatives, 89th Cong., 2nd Sess., Part 2, pursuant to H. Res. 13, pp. 534, 568 (1966)). In later testimony before the Senate Subcommittee

*As is evident from the record there are many ways to advertise and promote liquid bleach. Even among the Government's own witnesses there was no unanimity of opinion as to which method was more effective (R. 775a, 826a, 876a, 903a, 983a).

**Of course, neither Procter, nor any other advertiser, had any control over rate schedules, and such discounts as were accorded were within the sole control and discretion of the networks.

(referred to *supra*), these representatives confirmed that the discounts had, in fact, been eliminated (December 13, 1966, page 547; December 14, 1966, page 638). Only a minor "continuity" discount is being retained by the networks in their rate structure.*

We submit that it would, indeed, be anomalous for any significance of any sort to be attached to this claimed "competitive advantage" when it so clearly appears that (a) there never was any probability that it would be of any importance in the advertising of Clorox and (b) even the possibility of any such "advantage" disappears with the discontinuance of the discounts. In other words, the pertinency of these advertising discounts, which represent the sole objective "competitive advantage" factor which the Government was able to stress, has now evaporated.

Regardless of all else, we emphasize that this record is wholly deficient to permit of any acceptance of the Government's claims. Despite the Government's accent on these "discounts" in the appellate stages of this proceeding, the subject received little attention during the trial proceedings. No impartial experts were called to testify on this subject.** Nor is there any evidence in this record to permit any assessment of their real significance or import. And, remarkably, the Department of Justice has directly conceded that it really does not know what competitive

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*The "continuity discount" is a modest discount available to all advertisers, large or small, who are willing to make a binding commitment to participate in a network program at least once every two weeks for the period of a year. It is not a quantity or volume purchase discount.

**In lieu thereof, the Commission relied upon economic theory to bridge the gap between claimed advertising "advantages" and their probable effect on competition in the liquid bleach industry. The Commission's opinion is replete with references to extra-record writings. It draws upon theories (many of them disputatious) extracted from among 85 citations to 43 of such writings. None of these writings was based upon studies of the liquid bleach industry. The fallacy of any attempt to generalize or analogize from industry to industry was noted by a recognized authority in the field of the economics of adver-

significance these discounts ever had in any event.* There is nothing here upon which any informed judgment could be predicated to the end of treating these discounts as a basis for invalidating a conglomerate acquisition under Section 7.

The foregoing demonstrates that the Government has failed to sustain the burden of its argument that there are any discernible "advantages" resulting from the substitution of Procter for Clorox which have wrought, or are likely to bring about, any significant change in competitive

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tising. Directing comments to this very point, he notes that in the cigarette industry (referred to at page 40, n. 39 of the Government's brief) his own studies disclosed that advertising advantages were there a barrier to entry. Nevertheless, and with particular reference to the bleach industry, he observed that general principles resulting from empirical studies in some industries cannot indiscriminately be applied to another. Tennant, *"An Economist's View,"* Symposium: "Advertising, Competition and the Antitrust Laws," August 10-13, 1964, 26 A. B. A., Section of Antitrust Law 168, 174.

Procter maintained below and repeats here that the Commission's critical reliance upon extra-record evidence was violative of due process and Section 7(c) of the Administrative Procedure Act (5 U. S. C. A. § 1006(c)). The court below held, however, that the extra-record writings were general in nature and not directed to the facts of this case (R. 1558). We believe that its holding was in error. We contend that the Commission's utilization of, and reliance upon, these materials, as a substitute for evidence, constitutes a further basis for affirmance of the decision below.

*Mr. Edwin M. Zimmerman, Acting Assistant Attorney General, Department of Justice, recently appeared as a witness during the hearings referred to in the footnote at page 37, *supra*. Speaking on behalf of the Antitrust Division, he stated, "I wish to repeat that we do not know to what extent, if at all, these forms of discrimination [in the television advertising rate structure] exist. Nor do we know how serious an impact they may have. . . . [W]e have no view one way or the other on whether we have an octopus or a pussycat here." (pp. 724-729).

Also, in the light of this statement we cannot reconcile the Government's unrestrained characterizations of these discounts as "price discriminations" which might run afoul of certain sections of the antitrust laws (Gov't Br. p. 47). Certainly we are not aware of any proceeding, instituted by any agency of the Government, in which any such charge has been pressed.

conditions in the liquid bleach industry. These conclusions are applicable to existing as well as suppositious potential competitors. The Government's failure to sustain its claims respecting anti-competitive effects from competitive "advantages" is further reflected in the post-acquisition evidence which we next discuss.

B. The Claim That Actual Competition in the Bleach Industry May Be "Chilled" As a Result of the Acquisition Finds No Support in the Record.

The effect of the acquisition upon actual competition in the bleach industry has received little attention in the Government's brief. There is no direct claim that the business of competitors has been adversely affected. Perhaps the Government's strongest statement of its position respecting existing competition is included in the caption of the last section of its brief. There it states that the merger "tended to chill such competition . . . as remained in the bleach industry" (Gov't Br. p. 52; see also p. 23). Even this statement is related to some imagined "chilling effect" upon possible "expansion" activities of actual competitors.

Neither the "competitive advantages," which we have just discussed, nor the post-acquisition events support the Government's claim.

(1) The post-acquisition events now emphasized by the Government lend no support to its position, and the first decision of the Commission so held.

The Government's brief generally seeks to obscure the evidence of record concerning the years following the acquisition. It does refer to certain events which took place in the first of the post-acquisition years as indicative of Clorox's enhanced "competitive capabilities" (Gov't Br. p. 46). Even as to these events, there is no forthright claim that they were a result of the acquisition. Nor is there any evi-

dence that these occurrences are related to any such "enhanced" capabilities. And the claims, if made, would have no support in this record. Yet, the Government's discussion of these events has certainly been shaped so as to imply that had it not been for the acquisition, they would never have transpired.

Thus, at page 20 and in the footnote at page 46 of its brief, the Government refers to the fact that after the merger, Clorox began using sales promotions. But it does not openly contend that the use of such promotions was prompted by, or came about as a result of, the acquisition. Instead, by a *post hoc propter hoc* approach, it implies a causal relation. None is shown.*

At three different places in its brief, the Government refers to an incident occurring in Erie County, Pennsylvania (Gov't Br. pp. 20-21, 46, 52).** This was a competitive situation in which the major competitor of Clorox commenced the distribution of its bleach in that area some two months after the acquisition. The initial sales campaign featured the new Purex container, heralded by Purex as the "first major improvement in the packaging of liquid bleach in the industry's history" (RX 114, R. 392X, 1486a). The introductory campaign was implemented by an intensive advertising and promotional campaign, offering price re-

*All of such sales stimuli were well known to, and had been used in the household liquid bleach industry prior to, and following, the acquisition (R. 744a, 745a, 759a, 836a-837a, 842a, 846a-847a, 877a-878a, 904a, 950a, 1007a, 1042a-1043a, 1046a-1048a, 1056a, 1059a-1060a, 1089a). These techniques were well known to Clorox Chemical Co. management and its advertising agency (R. 676a-677a, 1384a-1385a). None were used which had not previously been conceived or considered by Clorox Chemical Co. prior to the acquisition (R. 685a-687a, 1415a-1416a). Their use was in no way attributable to the acquisition (R. 1384a-1385a).

**The Commission at one point in its opinion had referred to the same incident as an example of the "often intense price rivalry" prior to the acquisition (R. 451a).

ductions on all bottle sizes (R. 1564-1565; see also CX 454A-C, R. 191X-193X, 754a). Within the short space of less than *two* months after its entry into Erie, Purex had captured 32.5% of the entire market (CX 450, R. 189X, 796a). As the Government's own account of the facts shows, more than half of the share of the new market which Purex achieved was obtained at the expense of Clorox (Gov't Br. p. 20).

Clorox countered this new promotional effort with a defensive advertising and promotional campaign of its own (R. 715a-718a, 1565). In the ensuing months the Purex brand share of market declined and Clorox was able to regain its lost market share (CX 450, R. 189X, 796a). Purex retained and held a minimum of 7% of the market (R. 1493a).

The observations of the court below respecting this competitive encounter appropriately summarize its insignificance (R. 1565):

> "without the merger Clorox could, and in all probability would have resorted to the same measures and in all likelihood it would have obtained the same results. It had the know-how and the necessary finances to do so."

Nothing involved in this incident supports the Government's claim that the acquisition enhanced the ability of Clorox "to repel competitive forays by existing bleach producers" (Gov't Br. p. 52).

Reference is also made to the acquisition by Purex of the Fleecy-White brand of liquid bleach. It is wholly unrealistic to attribute that acquisition, even in part, to any "concern" by Purex that it could not compete with Clorox under Procter ownership (see Gov't Br. pp. 21-22 and 46). Purex has certainly evidenced no timidity over the years in

competing with Procter in its other product lines. For example, in its extensive expansion program through acquisition, it has acquired at least two soap companies (RX 77B, R. 361X, 1260a). These were obviously directly competitive with Procter's basic product line. It is also engaged in competing with Procter in the detergent field (CX 438, R. 128X-183X, 747a).

Moreover, long after the "Erie incident" (and before the purchase of Fleecy-White), the President of Purex, when he first testified in this proceeding, stated that Purex had "considered" expanding its territorial market in liquid bleach but that it had not done so "because of the narrow margin in—or the small margin of profit" in liquid bleaches (R. 738a-739a). He testified that Purex had "allocated its use of what capital funds [it had] . . . available in other areas" (R. 739a). He made no mention of the "Erie incident" nor was any mention made of any concern as to Clorox's competitive strength in connection with the decision of Purex to limit its territorial expansion.

It was not until almost one year later when he was recalled to testify by Commission counsel that he purported to relate the acquisition of Fleecy-White to the Purex entry into Erie (R. 1492a-1493a).* Thus, every objective circumstance concerning the Fleecy-White acquisition supports the inference that Purex bought that brand, more than a year after Procter acquired Clorox, because it had no concern about competing successfully with Clorox.**

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*The objectivity of this testimony must be evaluated in the light of the fact that Purex was the principal protagonist of the Commission in the prosecution of this proceeding. The Commission counsel who elicited this testimony is now the President of Purex.

**Reference is made to the "discontinuance" of the Vano brand of liquid bleach (Gov't Br. p. 46). Any fair appraisal of the evidence must lead to the conclusion that this occurrence had nothing to do with Procter's acquisition of Clorox. In August 1956 Babbitt, Inc. (Babbitt) acquired Chemicals, Inc. which, among its other products,

The facts as to these post-acquisition events now emphasized by the Government were before the Commission when it first considered the lawfulness of this acquisition. It held that the record as then constituted "did not provide an adequate basis for determining the [acquisition's] legality" (R. 254a). It clearly and unequivocally held that the evidence in the record which was before it was insufficient to establish any violation of Section 7. On the basis of that record, it noted "we might dismiss the complaint" (R. 254a). Instead, it remanded the proceeding to the hearing examiner for the reception of additional evidence (R. 254a).

(2) The post-acquisition evidence refutes the contention that the acquisition lessened competition or that there was any probability that it would. Such evidence was erroneously ignored in the second decision of the Commission.

When this matter came before the Commission for the second time, it held that the additional evidence adduced on the remand, covering four post-acquisition years, was entitled to no weight (R. 463a-464a).

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manufactured and distributed a liquid bleach called Vano (R. 1085a; CX 535, R. 211X, 1088a). The distribution of this brand had never extended beyond a limited area in the vicinity of San Francisco (R. 1086a). At the time of Babbitt's purchase, the sales of this brand had been steadily declining and were relatively insignificant (CX 530, R. 444X, 1087a, *in camera*). The annual Babbitt report for 1956 listed the various brands which it had purchased from Chemicals, Inc. But the Babbitt management considered the Vano liquid bleach brand so unimportant that it did not even mention its existence (CX 535, R. 211X, 213X, 1088a). At or about the time of this acquisition of Chemicals, Inc. (and before the acquisition of Clorox by Procter), Babbitt decided not to promote or advertise Vano liquid bleach (R. 1094a). Thus, for all practical purposes, Babbitt's decision to discontinue the manufacture and sale of Vano liquid bleach antedated Procter's acquisition of Clorox by some months. This insignificant and obscure event is proof of nothing.

Plainly, the Commission was in error.* The Government's efforts to rationalize the Commission's treatment of this evidence (Gov't Br. p. 45) in the light of this Court's subsequent decision in *Federal Trade Commission* v. *Consolidated Foods Corp.*, 380 U. S. 592, is contrived. This Court there held that post-acquisition evidence, like any other evidence, should be considered in a Section 7 proceeding. *Id.* at p. 598.

Here, that undisputed evidence showed:

First: There was no significant difference between the post- and pre-acquisition growth trend of Clorox (RX 134A, R. 399X, 1537a).

Second: The competitors of Clorox, in the four years subsequent to the acquisition, have sold more bleach for more money than they did in the four years prior to the acquisition. Specifically, they sold almost 200,000,000 more 32-ounce equivalent units of liquid bleach than they had sold in the four years immediately preceding the acquisition—representing added sales of more than $45,000,000 (RX 137, R. 421X, 1547a).

Third: In the last year for which share data are available, the competitors of Clorox sold more bleach for more money than they had sold at any time previously in the history of the liquid bleach industry (RX 137, R. 421X, 1547a).**

In no sense do we urge that these statistics are conclusive in determining the validity of this acquisition. They

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*With reference to the failure of the Commission to consider this evidence, the court of appeals noted (R. 1566):

> "We think the Commission was in error in ruling that post-merger evidence was admissible only in unusual cases and that it crept into the record needlessly in the present case, and in giving it *no* weight." (Emphasis added.)

**In the same period the Clorox share of market declined from its share in the previous year for the first time in its history (RX 134A, R. 399X, 1537a).

do, however, reflect the actual competitive situation in the liquid bleach industry in the four years following the acquisition. This evidence of the improvement in the business of the competitors of Clorox is a direct refutation of the Government's assumptions that their competition would be "chilled." For it indicates that in the years since the acquisition their competition has been vigorous and successful. It is plainly significant in rebutting any probability that competition may be substantially lessened in the future.

There is another significant fact emerging from the post-acquisition evidence. The Government in its brief has referred to the testimony, in the original record, of competing bleach producers (Gov't Br. p. 21 n. 21). Shortly after the acquisition, they had expressed their concern respecting Procter's competitive capabilities. When the Commission remanded this proceeding for further evidence, its order of remand encouraged, if it did not literally invite, the recall of competing bleach producers to testify as to any *actual* effects of the acquisition upon them (R. 252a, 254a). These prior witnesses could, of course, have been made available on the remand had counsel chosen to call them. And at the time of the remand hearings, they would have had four years of actual post-acquisition experience.

Yet, no testimony was adduced from these competitors as to whether any of their "concerns" had been well founded or borne out. Certainly, counsel for the Commission would have recalled them if their business had in any way been adversely affected by the acquisition, or their competitive efforts "chilled." The failure to do so, coupled with the prosperity of these competitors in the post-acquisition years, compels the conclusion that they continue to be a viable factor in this industry, and that there is no reasonable probability that their competition may be diminished in any respect.

IV.

NO DETERMINATION OF ILLEGALITY CAN BE PREDICATED UPON THE POSSIBILITY THAT THE SIZE OF PROCTER MAY HAVE DETERRENT EFFECTS UPON POSSIBLE POTENTIAL ENTRANTS

Finally, this brings us to the consideration of a claim which runs throughout the Government's brief. Implicit in its argumentation is that it matters not whether there is any substantial evidence to support its claims as to the nature or probable effects of the claimed "competitive advantages" which it has stressed. Also, that it matters not whether there is any showing that these have had, or probably will have, any effect upon existing competition. It is urging that the bare possibility of anti-competitive effects—stemming solely from the size of Procter—is enough. It says that these possibilities may have such deterrent effects upon some class of supposititious potential entrants as to constitute a violation of the statute.

A. Assumptions Based on Possibilities Stemming Solely From the Size of Procter Are Unsustainable.

We have shown that there is no substance to the contention that any of the specific cost savings or other "advantages" emphasized by the Government would result in any discernible or significant anti-competitive effects (pp. 33-41, *supra*). And even the Government does not suggest that Procter's size would be utilized to engage in predatory or any other recognized anti-competitive practices.

So, in the final analysis, the Government's claim comes down to the proposition that possibilities, stemming from the size and "availability" of additional resources (the necessary concomitant of any merger), represent some automatic increase in the barriers to entry which is violative of Section 7. It is supported by nothing more than the

"visceral" assumption that: "Of course, anybody who ever proposed to enter the business would be deterred by Procter's size." But here there is nothing to support either the "of course" or the assumption that, in this setting, Procter's size or resources would have any such effect.

Yet it is this pre-occupation with "size" which underlies the Commission's decision. The court of appeals recognized that it was this, rather than any likelihood that this particular acquisition would contravene Section 7, which underlay the Commission's decision. In the concluding part of its opinion it said (R. 1568-1569):

> "The Supreme Court has not ruled that bigness is unlawful, or that a large company may not merge with a smaller one in a different market field. Yet the size of Procter and its legitimate, successful operations in related fields pervades the entire opinion of the Commission, and seems to be the motivating factor which influenced the Commission to rule that the acquisition was illegal."

This is an apt summary of the Commission's decision. The "possibilities" which it attributed to "size" are not cognizable under the statute.

B. There Is Nothing To Support the Government's Assumptions As To the Existence of Any Class of Prospective Entrants, Or As To Any Reasons Why Entry Might Be Deterred.

The Government's claims respecting deterrent effects upon potential competitors are also undermined by another set of assumptions which it has had to make. These pertain to the existence of a class of likely entrants, as well as to "why" or in what respect they would be deterred by the so-called "barriers to entry" accented by the Government.

While Section 7 explicitly speaks in terms of a substantial lessening of "competition," the concept of "competition" embraces certain restraints upon potential—as well as actual—competitors. But to be within the reach of the statute there must be some showing that the potential competition, allegedly affected, has some substance. There must be some showing of the likelihood that it both exists and would be deterred. Here the Government has nothing but assumptions to support either factor.

As to the existence of any prospective entrants, the Government simply calls upon its imagination that they "might" be companies which it calls the "large multi-product manufacturers of related products" (Gov't Br. pp. 39, 49, 51). In this category it lists Lever Brothers, Colgate-Palmolive and General Foods. The vacuousness of the Government's assumptions in respect of such "prospective entrants" is evident from the following:

(1) There is not an iota of evidence in this record indicating any interest on the part of these, or any similar firms in entering the business at any time.

(2) The suggestion that profit potentials might, in the future, make independent entry attractive is simply a reflection of the ultimate in speculation.

(3) The obvious realities negative the Government's assumptions. The companies identified by it as "likely" entrants are in constant day-to-day competition with Procter in many product lines. Why should it be supposed that Procter's presence in the bleach industry would be a deterrent to these firms? Why is it not equally reasonable to assume that the very fact that Procter now is in the business might well induce these very firms to enter on their own?*

*See United States v. Penn-Olin Chemical Co., 378 U. S. 158, 174.

(4) Further, as to the Government's list of "likely" entrants, what is there to warrant any assumption that the supermarket chains, for example, would be deterred from engaging in this business because of the presence of Procter? These large, financially sufficient institutions vigorously merchandise their private label brands of bleach in competition with Clorox. They are also in daily competition with Procter in the merchandising of their own brands of many other products sold through their stores. If entry ever became attractive on their own, it is captious to suggest that Procter's competition would deter them.

Emphasizing the fact that the Government's claims are based on sheer abstractions is the circumstance that all of the matters, to which we have alluded above, were susceptible of proof if any substance attached to them. The substantiality of any effect of Procter's entry upon other possible entrants (if such exist) is not a matter to be gleaned from treatises, or to be based on surmise and conjecture. It is a matter of evidence. Witnesses from the companies which the Government says might be likely entrants could have been called to testify. Other proof could have been offered. Speculation would be unnecessary. None of this occurred and the record here contains nothing supporting the validity of the Government's assumptions. And this defect in proof infects all of the Government's deductions respecting restraints upon the entry of potential competitors.

Thus, what is here being urged is that a violation of Section 7 can be predicated upon the *possibility* that *assumed* anti-competitive effects *might* deter the *possible* entry of *assumed* prospective competitors—as to none of which is there any evidence that they ever had, or were

likely to have, any interest in entering the business. This is the antithesis of the requirement of the statute that violations can only be based upon "probabilities"—and only such probabilities as are established by substantial evidence.* The Government is relying upon the very type of ephemeral possibility which is not cognizable under Section 7. To predicate illegality upon such illusory restraints transcends all recognized concepts of the scope of the statute.

The Government acknowledges that no such extension of the reach of Section 7 has ever been "explicitly" recognized in the decisions of this Court (Gov't Br. p. 34). Indeed, it has not. And neither should it be. Nor is anything added

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*However unnecessary, we set out passages from opinions of this Court enunciating this essential principle.

In Brown Shoe Co. v. United States, 370 U. S. 294, this Court said (at p. 323):

> ". . . Congress used the words *'may be* substantially to lessen competition' . . . [emphasis supplied by the Court], to indicate that its concern was with *probabilities*, not certainties. Statutes existed for dealing with clear-cut menaces to competition; no statute was sought for dealing with *ephemeral possibilities*. Mergers with a *probable anticompetitive effect* were to be proscribed by this Act." (Emphasis added except where otherwise noted.)

And in a footnote on the same page of its opinion, it quoted from the final Senate Report:

> "The use of these words ("may be") means that the bill, if enacted, would not apply to the mere *possibility* but only to the reasonable probability of the prescribed [sic] effect. . . ." (Emphasis added.)

In Federal Trade Commission v. Consolidated Foods Corp., 380 U. S. 592, 598, it was noted:

> "The 'mere *possibility*' of the prohibited restraint is not enough. (*United States* v. *du Pont & Co., supra*, p. 598). Probability of the proscribed evil is required, as we have noted. . . . [T]he force of § 7 is still in probabilities. . . ."

In the concurring opinion in the same case, it is stated at page 605:

> "The touchstone of § 7 is the probability that competition will be lessened. But before a court takes the drastic step of ordering divestiture, the evidence must be clear that such a probability exists."

by the Government's assertion that it is "reasonable" to apply its theory to conglomerate mergers (Gov't Br. p. 34). For whether "reasonable" or not in the eyes of the enforcement agencies, the Congress has sanctioned no such principle.

Congress knew about conglomerate mergers. Had it intended that they should be banned or that the size of merging companies should be the standard of illegality, or that speculation by enforcement agencies could be the substitute for substantial evidence, it would have so legislated. This it did not do.

Yet, under the theory here espoused, every diversification by acquisition on the part of a large business entity would represent a "lessening" of the potential competition of potential entrants. For in every such acquisition there would be "substituted" the "size" of the acquiring company. The reach of the Government's theory would endow it with the power to proscribe all such mergers where, in the arbitrary judgment of the enforcement agencies, "size" would give rise to possibilities that some lessening of competition might result. Any such standard would make judicial review an empty gesture, and would frustrate the intendment of the legislation.

In its petition for *certiorari* the Government represented that this case posed the problem of evolving "proper legal standards" for judging conglomerate mergers (p. 11). It urged that the rejection of the Commission's "standards" would impair the Government's ability to proceed against mergers of this type. Its position is untenable. The vitality of Section 7 is not sapped or diminished by the determination that in this case the Government has not sustained its burden. The effectiveness of the statute, in the proscription of mergers which contravene it, is not curtailed by the recognition that the Government has failed to support its conclusions by substantial evidence. The affirmance of the decision below, so clearly required by the record here, simply means that the standards established by the statute and enunciated by this Court have not been satisfied.

CONCLUSION

For all of the foregoing reasons this protracted litigation, which is now in its tenth year, should come to a close. We respectfully submit that the decision of the court of appeals should be affirmed.

Respectfully submitted,

KENNETH C. ROYALL,
FREDERICK W. R. PRIDE,
ROBERT D. LARSEN,
200 Park Avenue,
New York, N. Y. 10017.
Attorneys for *The Procter & Gamble Company.*

RICHARD W. BARRETT,
THOMAS S. CALDER,
DINSMORE, SHOHL, BARRETT,
COATES & DEUPREE,
12th Floor Central Trust Tower,
Cincinnati, Ohio 45202.

ROYALL, KOEGEL, HARRIS & CASKEY,
1730 K Street, N. W.,
Washington, D. C. 20006.
Of Counsel.

January, 1967

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 342

FEDERAL TRADE COMMISSION, PETITIONER

v.

THE PROCTER & GAMBLE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR THE FEDERAL TRADE COMMISSION

We deem it appropriate to reply briefly to two points raised by Procter in its brief.

1. In response to our argument that the merger strengthens Clorox's already dominant position in the liquid bleach industry by conferring upon it substantial new advantages in advertising and promotion, Procter answers that the record shows the alleged advantages to be "either entirely imaginary or improbable" (Br. 33). We note, however, that to support this claim as to what the *record* demonstrates Procter relies heavily upon certain testimony before

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the Senate Antitrust and Monopoly Subcommittee[1] that was given more than nine years after the merger, more than four years after the record in the Commission proceeding was closed, and indeed some of it two weeks after the government's brief was filed in this case. If the validity of administrative orders is to be determined upon the basis of evidence that was not even in existence when the agency rendered its decision, it is plain that administrative proceedings would never become final. Just this Term this Court firmly rejected such a contention, declining to consider evidence of "present conditions" in a case, like this, already 10 years old. *Illinois C.R. Co.* v. *Norfolk & W.R. Co.*, 385 U.S. 57, 75.

In addition, we point out that Procter has offered a highly tendentious and misleading presentation of the evidence developed before the Subcommittee—quoting only the self-serving declarations by the network executives and ignoring some five volumes of testimony that indicate forcefully that the advantages of the large, multi-product advertiser—like Procter—are even greater than the Commission thought when it decided this case.

Procter lays heavy stress on testimony to the effect that the discount schedules in the network rate cards have been abolished. In context, it becomes evident that the change in the rate cards has little significance with respect to the continued prevalence of discrimi-

[1] Hearings before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, on Possible Discriminations in TV Advertising, 89th Cong., 2d Sess. (1966).

nation in favor of large advertisers. Testimony of a network executive [2] indicates that network television sponsorship is sold to advertisers in basically three ways. First, under the "time-only" form of sponsorship the advertiser contracts with a network for a half-hour or an hour of time and supplies its own program. As late as the last quarter of 1959, 45 percent of the evening schedule on CBS was sold in this manner. At the present time less than 6 percent of CBS evening programming is advertiser supplied. The second form of sponsorship is the so called "conventional sponsorship," in which the advertiser usually contracts for a half-hour or more of network time and also pays the network a program price for the right to sponsor the program. The basic difference between "conventional" and "time-only" purchases is apparently that in the former the advertiser buys the program from the network, in the latter from an independent programmer. Again, in the last quarter of 1959, 50.4 percent of the CBS evening schedule was sold on this basis. At the present time 26 percent of the CBS evening schedule is so sold. The third type of sponsorship is "participating minutes." On this kind of sale the advertiser pays a single price, covering both time and program charges, for a minute on a particular program. In 1959 only 4.9 percent of the CBS evening schedule was sold as participating minutes; today this type of sale ac-

[2] Except as otherwise indicated, this account of recent trends in network advertising is taken from the testimony of Mr. Thomas H. Dawson, Senior Vice President of CBS Television, in Hearings on Possible Discriminations, *supra*, pp. 542, 543–546.

counts for approximately 65 percent of the CBS evening schedule.

The network rate cards, partially relied upon by the Commission in making its determination that large advertisers enjoyed significant advantages,[3] applied to both time-only and conventional sponsorship, but not to the sale of participating minutes. Thus, in 1959 there was a published discount schedule that gave large advertisers significant advantages on purchases of advertising time—which then constituted 95 percent of the CBS evening schedule. Today, the rate card applies to only 32 percent of the CBS evening schedule, 6 percent of ABC sales (Hearings, *supra,* p. 54–A), and only a "small minority" of NBC sales (*id.,* p. 684). If the trend of the past seven years continues, the volume of sales affected by the rate cards will diminish even further. For this reason, it is of little significance that the networks will soon abandon publication of their discount schedules. The fact remains that all advertising sales (time only, conventional sponsorship, and participating minutes) are subject to negotiation. The prices at which these sales are made are not available to any government agency, much less the public, and thus the opportunity for undetected discrimination remains.[4] Yet, although such discrimination is difficult

[3] We stress that the discounts specified in these cards represent but one of many factors relied on by the Commission in concluding that the merger enhanced Clorox's power to dominate the liquid bleach industry.

[4] Testifying before the Subcommittee, the Chairman of the Federal Trade Commission, Paul Rand Dixon, had these observations on the announcement by the networks that they were

to detect, the record before the Subcommittee contains extensive evidence that it continues and is substantial.[5]

2. Procter argues (Br. 26) that the government, in contending that the merger eliminated substantial po-

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eliminating their published discount schedules (p. 477): "Mere announcements by the networks may or may not remove the problem of alleged discriminination and even an actual change in a published rate card does not necessarily mean that substantial and anticompetitive discounts have been removed, assuming they previously have existed. Our experience in the field of discounts and price discrimination shows that most grants of discriminatory prices are not, as a rule, openly published, and that the removal of published discounts may only signal a shift in pattern—toward negotiations which utilize the published rates only as a starting point."

[5] See, *e.g.*, Hearings on Possible Discriminations, *supra*, pp. 16–17, 18, 20–21, 25, 56; 87–90 (a small advertiser "was all but escorted" out of CBS offices); 92 (no prime time available for small advertisers); 93, 109, 134–135, 203–209, 214, 242–243, 247, 248; 268 ("Networks and stations today still grant unpublished concessions"); 273 (large advertisers have a right of first refusal on better programs); 284–289, 294, 295, 309–311, 321, 330–331, 336, 337–338, 340, 359, 371, 381, 437.

With regard to the Justice Department's statement in the hearings (relied upon by Procter (Br. 39–40)), Procter's representations are inaccurate. Mr. Zimmerman expressly stated that he would direct his comments to only two subjects (Hearings, p. 716): First, the general relationship between advertising discounts and competition, and, secondly, an enumeration of the types of discrimination which the testimony of prior witnesses indicated might exist. Mr. Zimmerman's testimony on the factual issue whether there was in fact discrimination, was addressed solely to the record before the committee. At the time his testimony was prepared the networks had not yet testified. Because the record was incomplete the Department took no position on this issue.

tential competition, has misapplied the test of *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158. So saying, Procter misconceives the fundamental theory of the Commission in the present case. In *Penn-Olin*, a joint-venture case, the Court suggested standards for determining the likelihood that at least one of the joint venturers would have entered the market on its own but for the joint venture. The probability of such entry in fact was critical because, if neither party to the joint venture would have entered independently, it would follow that the joint venture produced a net increase in the number of competitors in the relevant market. Here the question is quite different. It is not whether Procter in fact would have entered the bleach industry on its own, but for the merger; it is whether Procter's ability and willingness to enter—if Clorox made entry attractive by exploiting its dominant position—were such as to impose a restraining influence upon such exploitation during the period while Procter merely waited in the wings prepared to enter when conditions ripened. This salutary influence—which the Commission correctly deemed substantial in the circumstances—was eliminated by the merger. And the merger, of course, unlike a joint venture, did not introduce a new competitor into the

relevant market but merely substituted Procter for Clorox as the dominant firm.*

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.
DONALD F. TURNER,
Assistant Attorney General.
RICHARD A. POSNER,
Assistant to the Solicitor General.
ROBERT K. BAKER,
Attorney.

JAMES MCI. HENDERSON,
General Counsel,
J. B. TRULY,
Assistant General Counsel,
FREDERICK H. MAYER,
GERALD HARWOOD,
Attorneys,
Federal Trade Commission.

JANUARY 1967.

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*We erred in stating in our opening brief (p. 43) that since the merger Procter has included Clorox bleach in joint promotions with other Procter products. We stress, however, that Clorox now has the opportunity to participate in the savings afforded by joint promotions—and that these savings exceed postage expenses (substantial as such expenses are in large-scale promotional campaigns). Among the substantial costs that can be divided among many products in joint promotions are, for example, the costs of a contest (which in one case were more than $100,000 in prizes alone) and the cost of television and newspaper advertising to publicize the promotion (CX 111A–I, R. 117x–125x; CX 279A–O, R. 137x–142x; CX 420, R. 171x).

U.S. GOVERNMENT PRINTING OFFICE: 1967

SUPREME COURT OF THE UNITED STATES

No. 342.—October Term, 1966.

Federal Trade Commission, Petitioner, v. The Procter & Gamble Company. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April 11, 1967.]

Mr. Justice Douglas delivered the opinion of the Court.

This is a proceeding initiated by the Federal Trade Commission charging that respondent, Procter & Gamble Co., had acquired the assets of Clorox Chemical Co. in violation of § 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U. S. C. § 18.[1] The charge was that Procter's acquisition of Clorox may substantially lessen competition or tend to create a monopoly in the production and sale of household liquid bleaches.

Following evidentiary hearings, the hearing examiner rendered his decision in which he concluded that the acquisition was unlawful and ordered divestiture. On appeal, the Commission reversed, holding that the record as then constituted was inadequate, and remanded to the examiner for additional evidentiary hearings. 58 F. T. C. 1203. After the additional hearings, the examiner again

[1] "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

held the acquisition unlawful and ordered divestiture. The Commission affirmed the examiner and ordered divestiture. 63 F. T. C. —. The Court of Appeals for the Sixth Circuit reversed and directed that the Commission's complaint be dismissed. 358 F. 2d 24. We find that the Commission's findings were amply supported by the evidence, and that the Court of Appeals erred.

As indicated by the Commission in its painstaking and illuminating report, it does not particularly aid analysis to talk of this merger in conventional terms, namely, horizontal or vertical or conglomerate. This merger may most appropriately be described as a "product-extension merger," as the Commission stated. The facts are not disputed, and a summary will demonstrate the correctness of the Commission's decision.

At the time of the merger, Clorox was the leading manufacturer in the heavily concentrated household liquid bleach industry. It is agreed that household liquid bleach is the relevant line of commerce. The product is used in the home as a germicide and disinfectant, and, more importantly, as a whitening agent in washing clothes and fabrics. It is a distinctive product with no close substitutes. Liquid bleach is a low-price, high-turnover consumer product sold mainly through grocery stores and supermarkets. The relevant geographical market is the Nation and a series of regional markets. Because of high shipping costs and low sales price, it is not feasible to ship the product more than 300 miles from its point of manufacture. Most manufacturers are limited to competition within a single region since they have but one plant. Clorox is the only firm selling nationally; it has 13 plants distributed throughout the Nation. Purex, Clorox's closest competitor in size, does not distribute its bleach in the northeast or middle-Atlantic States; in 1957, Purex's bleach was available in less than 50% of the national market.

At the time of the acquisition, Clorox was the leading manufacturer of household liquid bleach, with 48.8% of the national sales—annual sales of slightly less than $40,000,000. Its market share had been steadily increasing for the five years prior to the merger. Its nearest rival was Purex, which manufactures a number of products other than household liquid bleaches, including abrasive cleaners, toilet soap, and detergents. Purex accounted for 15.7% of the household liquid bleach market. The industry is highly concentrated; in 1957, Clorox and Purex accounted for almost 65% of the Nation's household liquid bleach sales, and, together with four other firms, for almost 80%. The remaining 20% was divided among over 200 small producers. Clorox had total assets of $12,000,000; only eight producers had assets in excess of $1,000,000 and very few had assets of more than $75,000.

In light of the territorial limitations on distribution, national figures do not give an accurate picture of Clorox's dominance in the various regions. Thus, Clorox's seven principal competitors did no business in New England, the mid-Atlantic States, or metropolitan New York. Clorox's share of the sales in those areas was 56%, 72%, and 64% respectively. Even in regions where its principal competitors were active, Clorox maintained a dominant position. Except in metropolitan Chicago and the west-central States Clorox accounted for at least 39%, and often a much higher percentage, of liquid bleach sales.

Since all liquid bleach is chemically identical, advertising and sales promotion is vital. In 1957 Clorox spent almost $3,700,000 on advertising, imprinting the value of its bleach in the mind of the consumer. In addition, it spent $1,700,000 for other promotional activities. The Commission found that these heavy expenditures went far to explain why Clorox maintained so high a mar-

ket share despite the fact that its brand, though chemically indistinguishable from rival brands, retailed for a price equal to or, in many instances, higher than its competitors.

Procter is a large, diversified manufacturer of low-price, high-turnover household products sold through grocery, drug, and department stores. Prior to its acquisition of Clorox, it did not produce household liquid bleach. Its 1957 sales were in excess of $1,100,000,000 from which it realized profits of more than $67,000,000; its assets were over $500,000,000. Procter has been marked by rapid growth and diversification. It has successfully developed and introduced a number of new products. Its primary activity is in the general area of soaps, detergents, and cleansers; in 1957, of total domestic sales, more than one-half (over $500,000,000) were in this field. Procter was the dominant factor in this area. It accounted for 54.4% of all packaged detergent sales. The industry is heavily concentrated—Procter and its nearest competitors, Colgate-Palmolive and Lever Brothers, account for 80% of the market.

In the marketing of soaps, detergents, and cleansers, as in the marketing of household liquid bleach, advertising and sales promotion are vital. In 1957, Procter was the Nation's largest advertiser, spending more than $80,000,000 on advertising and an additional $47,000,000 on sales promotion. Due to its tremendous volume, Procter receives substantial discounts from the media. As a multi-product producer Procter enjoys substantial advantages in advertising and sales promotion. Thus, it can and does feature several products in its promotions, reducing the printing, mailing, and other costs for each product. It also purchases network programs on behalf of several products, enabling it to give each product network exposure at a fraction of the cost per product that a firm with only one product to advertise would incur.

Prior to the acquisition, Procter was in the course of diversifying into product lines related to its basic detergent-soap-cleanser business. Liquid bleach was a distinct possibility since packaged detergents—Procter's primary product line—and liquid bleach are used complementarily in washing clothes and fabrics, and in general household clothing. As noted by the Commission:

> "Packaged detergents—Procter's most important product category—and household liquid bleach are used complementarily, not only in the washing of clothes and fabrics, but also in general household cleaning, since liquid bleach is a germicide and disinfectant as well as a whitener. From the consumer's viewpoint, then, packaged detergents and liquid bleach are closely related products. But the area of relatedness between products of Procter and of Clorox is wider. Household cleansing agents in general, like household liquid bleach, are low-cost, high-turnover household consumer goods marketed chiefly through grocery stores and pre-sold to the consumer by the manufacturer through massive advertising and sales promotions. Since products of both parties to the merger are sold to the same customers, at the same stores, and by the same merchandising methods, the possibility arises of significant integration at both the marketing and distribution levels." 63 F. T. C. —, —.

The decision to acquire Clorox was the result of a study conducted by Procter's promotion department designed to determine the advisability of entering the liquid bleach industry. The initial report noted the ascendancy of liquid bleach in the large and expanding household bleach market, and recommended that Procter purchase Clorox rather than enter independently. Since a large investment would be needed to obtain a satis-

factory market share, acquisition of the industry's leading firm was attractive. "Taking over the Clorox business . . . could be a way of achieving a dominant position in the liquid bleach market quickly, which would pay out reasonably well." 63 F. T. C., at —. The initial report predicted that Procter's "sales, distribution and manufacturing setup" could increase Clorox's share of the markets in areas where it was low. The final report confirmed the conclusions of the initial report and emphasized that Procter could make more effective use of Clorox's advertising budget and that the merger would facilitate advertising economies. A few months later, Procter acquired the assets of Clorox in the name of a wholly owned subsidiary, the Clorox Company, in exchange for Procter stock.

The Commission found that the acquisition might substantially lessen competition. The findings and reasoning of the Commission need be only briefly summarized. The Commission found that the substitution of Procter with its huge assets and advertising advantages for the already dominant Clorox would dissuade new entrants and discourage active competition from the firms already in the industry due to fear of retaliation by Procter. The Commission thought it relevant that retailers might be induced to give Clorox preferred shelf space since it would be manufactured by Procter, which also produced a number of other products marketed by the retailers. There was also the danger that Procter might underprice Clorox in order to drive out competition, and subsidize the underpricing with revenue from other products. The Commission carefully reviewed the effect of the acquisition on the structure of the industry, noting that "the practical tendency of the . . . merger . . . is to transform the liquid bleach industry into an arena of big business competition only, with the few small firms falling by the

wayside, unable to compete with their giant rivals." 63 F. T. C., at —. Further, the merger would seriously diminish potential competition by eliminating Procter as a potential entrant into the industry. Prior to the merger, the Commission found that Procter was the most likely prospective entrant, and absent the merger would have remained on the periphery, restraining Clorox from exercising its market power. If Procter had actually entered, Clorox's dominant position would have been eroded and the concentration of the industry reduced. The Commission stated that it had not placed reliance on post-acquisition evidence in holding the merger unlawful.

The Court of Appeals said that the Commission's finding of illegality had been based on "treacherous conjecture," mere possibility and suspicion. 358 F. 2d 74, 83. It dismissed the fact that Clorox controlled almost 50% of the industry, that two firms controlled 65%, and that six firms controlled 80% with the observation that "the fact that in addition to the six . . . producers sharing eighty per cent of the market, there were two hundred smaller producers . . . would not seem to indicate anything unhealthy about the market conditions." *Id.*, at 80. It dismissed the finding that Procter, with its huge resources and prowess, would have more leverage than Clorox with the statement that it was Clorox which had the "knowhow" in the industry, and that Clorox's finances were adequate for its purposes. *Ibid.* As for the possibility that Procter would use its tremendous advertising budget and volume discounts to push Clorox, the court found "it difficult to base a finding of illegality on discounts on advertising." 358 F. 2d, at 81. It rejected the Commission's finding that the merger eliminated the potential competition of Procter because "there was no reasonable probability that Procter would

have entered the household liquid bleach market but for the merger." "There was no evidence tending to prove that Procter ever intended to enter this field on its own." 358 F. 2d, at 82. Finally, "there was no evidence that Procter at any time in the past engaged in predatory practices, or that it intended to do so in the future." *Ibid.*

The Court of Appeals also heavily relied on post-acquisition "evidence to the effect that the other producers subsequent to the merger were selling more bleach for more money than ever before" (358 F. 2d, at 80), that "there [had] been no significant change in Clorox's market share in the four years subsequent to the merger" (*ibid.*); and concluded that "this evidence certainly does not prove anti-competitive effects of the merger." *Id.*, at 82. The Court of Appeals, in our view, misapprehended the standards for its review and the standards applicable in a § 7 proceeding.

Section 7 of the Clayton Act was intended to arrest the anticompetitive effects of market power in their incipiency. The core question is whether a merger may substantially lessen competition, and necessarily requires a prediction of the merger's impact on competition, present and future. See *Brown Shoe Co.* v. *United States*, 370 U. S. 294; *United States* v. *Philadelphia National Bank*, 374 U. S. 321. The section can deal only with probabilities, not with certainties. *Brown Shoe Co.* v. *United States*, *supra*, at 323; *United States* v. *Penn-Olin Chemical Co.*, 378 U. S. 158. And there is certainly no requirement that the anticompetitive power manifest itself in anticompetitive action before § 7 can be called into play. If the enforcement of § 7 turned on the existence of actual anticompetitive practices, the congressional policy of thwarting such practices in their incipiency would be frustrated.

All mergers are within the reach of § 7, and all must be tested by the same standard, whether they are classi-

fied as horizontal, vertical, conglomerate[2] or other. As noted by the Commission, this merger is neither horizontal, vertical, nor conglomerate. Since the products of the acquired company are complementary to those of the acquiring company and may be produced with similar facilities, marketed through the same channels and in the same manner, and advertised by the same media, the Commission aptly called this acquisition a "product-extension merger":

> "By this acquisition . . . Procter has not diversified its interests in the sense of expanding into a substantially different, unfamiliar market or industry. Rather, it has entered a market which adjoins, as it were, those markets in which it is already established, and which is virtually indistinguishable from them insofar as the problems and techniques of marketing the product to the ultimate consumer are concerned. As a high official of Procter put it, commenting on the acquisition of Clorox, 'While this is a completely new business for us, taking us for the first time into the marketing of a household bleach and disinfectant, we are thoroughly at home in the field of manufacturing and marketing low priced, rapid turn-over consumer products.'" 63 F. T. C. —, —.

The anticompetitive effects with which this product-extension merger is fraught can easily be seen: (1) the substitution of the powerful acquiring firm for the smaller, but already dominant, firm may substantially reduce the competitive structure of the industry by raising entry barriers and by dissuading the smaller firms from aggressively competing; (2) the acquisition eliminates the potential competition of the acquiring firm.

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[2] A pure conglomerate merger is one in which there are no economic relationships between the acquiring and the acquired firm.

The liquid bleach industry was already oligopolistic before the acquisition, and price competition was certainly not as vigorous as it would have been if the industry were competitive. Clorox enjoyed a dominant position nationally, and its position approached monopoly proportions in certain areas. The existence of some 200 fringe firms certainly does not belie that fact. Nor does the fact, relied upon by the court below, that after the merger, producers other than Clorox "were selling more bleach for more money than ever before." 358 F. 2d, at 80. In the same period, Clorox increased its share from 48.8% to 52%. The interjection of Procter into the market considerably changed the situation. There is every reason to assume that the smaller firms would become more cautious in competing due to their fear of retaliation by Procter. It is probable that Procter would become the price leader and that oligopoly would become more rigid.

The acquisition may also have the tendency of raising the barriers to new entry. The major competitive weapon in the successful marketing of bleach is advertising. Clorox was limited in this area by its relatively small budget and its inability to obtain substantial discounts. By contrast, Procter's budget was much larger; and, although it would not devote its entire budget to advertising Clorox, it could divert a large portion to meet the short-term threat of a new entrant. Procter would be able to use its volume discounts to advantage in advertising Clorox. Thus, a new entrant would be much more reluctant to face the giant Procter than it would have been to face the smaller Clorox.[3]

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[3] The barriers to entry have been raised both for entry by new firms and for entry into new geographical markets by established firms. The latter aspect is demonstrated by Purex's lesson in Erie, Pennsylvania. In October 1957, Purex selected Erie, Pennsylvania—where it had not sold previously—as an area in which to test the

Possible economies cannot be used as a defense to illegality. Congress was aware that some mergers which lessen competition may also result in economies but it struck the balance in favor of protecting competition. See *Brown Shoe Co.* v. *United States, supra,* at 344.

The Commission also found that the acquisition of Clorox by Procter eliminated Procter as a potential competitor. The Court of Appeals declared that this finding was not supported by evidence because there was no evidence that Procter's management had ever intended to enter the industry independently and that Procter had never attempted to enter. The evidence, however, clearly shows that Procter was the most likely entrant. Procter had recently launched a new abrasive cleaner in an industry similar to the liquid bleach industry, and had wrested leadership from a brand that had enjoyed

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salability, under competitive conditions, of a new bleach. The leading brands in Erie were Clorox, with 52%, and the "101" brand, sold by Gardner Manufacturing Company, with 29% of the market. Purex launched an advertising and promotional campaign to obtain a broad distribution in a short time, and, in five months captured 33% of the Erie market. Clorox's share dropped to 35% and 101's to 17%. Clorox responded by offering its bleach at reduced prices, and then added an offer of a $1-value ironing board cover for 50¢ with each purchase of Clorox at the reduced price. It also increased its advertising with television spots. The result was to restore Clorox's lost market share and, indeed, to increase it slightly. Purex's share fell to 7%.

Since the merger Purex has acquired the fourth largest producer of bleach, John Paul Products Company, which owned and marketed "Fleecy White" brand in geographic markets which Purex was anxious to enter. One of the reasons for this acquisition, according to Purex's president, was that:

"Purex had been unsuccessful in expanding its market position geographically on Purex liquid bleach. The economics of the bleach business, and the strong competitive factors as illustrated by our experience in Erie, Pennsylvania, make it impossible, in our judgment, for us to expand our market on liquid bleach."

even a larger market share than had Clorox. Procter was engaged in a vigorous program of diversifying into product lines closely related to its basic products. Liquid bleach was a natural avenue of diversification since it is complementary to Procter's products, is sold to the same customers through the same channels, and is advertised and merchandised in the same manner. Procter had substantial advantages in advertising and sales promotions, which, as we have seen, are vital to the success of liquid bleach. No manufacturer had a patent on the product or its manufacture, necessary information relating to manufacturing methods and processes was readily available, there was no shortage of raw material, and the machinery and equipment required for a plant of efficient capacity were available at reasonable cost. Procter's management was experienced in producing and marketing goods similar to liquid bleach. Procter had considered the possibility of independently entering but decided against it because the acquisition of Clorox would enable Procter to capture a more commanding share of the market.

It is clear that the existence of Procter at the edge of the industry exerted considerable influence on the market. First, the market behavior of the liquid bleach industry was influenced by each firm's predictions of the market behavior of its competitors, actual and potential. Second, the barriers to entry by a firm of Procter's size and with its advantages were not significant. There is no indication that the barriers were so high that the price Procter would have to charge would be above the price that would maximize the profits of the existing firms. Third, the number of potential entrants was not so large that the elimination of one would be insignificant. Few firms would have the temerity to challenge a firm as solidly entrenched as Clorox. Fourth,

Procter was found by the Commission to be the most likely entrant. These findings of the Commission were amply supported by the evidence.

The judgment of the Court of Appeals is reversed and remanded with instructions to affirm and enforce the Commission's order.

It is so ordered.

MR. JUSTICE STEWART and MR. JUSTICE FORTAS took no part in the consideration or decision of this case.

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SUPREME COURT OF THE UNITED STATES

No. 342.—October Term, 1966.

Federal Trade Commission, Petitioner, *v.* The Procter & Gamble Company.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April 11, 1967.]

Mr. Justice Harlan, concurring.

I agree that the Commission's order should be sustained, but I do not share the majority opinion's view that a mere "summary will demonstrate the correctness of the Commission's decision" nor that "[t]he anticompetitive effects with which this product-extension merger is fraught can easily be seen." I consider the case difficult within its own four corners, and beyond that, its portents for future administrative and judicial application of § 7 of the Clayton Act to this kind of merger important and far reaching. From both standpoints more refined analysis is required before putting the stamp of approval on what the Commission has done in this case. It is regrettable to see this Court as it enters this comparatively new field of economic adjudication starting off with what has almost become a kind of *res ipsa loquitor* approach to antitrust cases.

The type of merger represented by the transaction before us is becoming increasingly important as large corporations seek to diversify their operations, see Blair, The Conglomerate Merger in Economics and Law, 46 Geo. L. J. 672, and "[c]ompanies looking for new lines of business tend to buy into those fields with which they have at least some degree of familiarity, and where economies and efficiencies from assimilation are at least possible." Turner, Conglomerate Mergers and Section 7

of the Clayton Act, 78 Harv. L. Rev. 1313, 1315. Application of § 7 to such mergers has been troubling to the Commission and the lower courts. The author of the Commission's exhaustive opinion in this case later explained that "the elaborateness of the opinion . . . reflected the Commission's awareness that it was entering relatively uncharted territory." *General Foods Corp.*, 3 Trade Reg. Rep. ¶ 17,465 (Commissioner Elman, dissenting, at p. 22,745). The Sixth Circuit was equally troubled in this case by the lack of standards in the area and had difficulty in perceiving any effect on competition from the merger since "Procter merely stepped into the shoes of Clorox." 358 F. 2d 74, 82. And in the somewhat similar situation presented to the Seventh Circuit in *Ekco Products Co.* v. *FTC*, 347 F. 2d 745, the need for comprehensive consideration of the problem by this Court was laid bare. The lower court there attempted to review the Commission action before it as narrowly as possible and refused to formulate principles which might control other cases. It said:

> "If we are to have a different standard or set of rules, aside from those applying to vertical and horizontal combinations, to test the illegality of conglomerate mergers and product-extension acquisitions in cases brought under Section 7 of the Clayton Act, we feel compelled to look to the Supreme Court for guidance." 347 F. 2d, at 751.

I thus believe that it is incumbent upon us to make a careful study of the facts and opinions below in this case, and at least to embark upon the formulation of standards for the application of § 7 to mergers which are neither horizontal nor vertical and which previously have not been considered in depth by this Court.[1] I consider

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[1] It has been argued that the mergers before this Court in *United States* v. *Aluminum Co. of America*, 377 U. S. 271, and *United States* v. *Continental Can Co.*, 378 U. S. 441, were essentially con-

this especially important in light of the divisions which have arisen in the Commission itself in similar cases decided subsequent to this one. See *General Foods Corp., supra; National Tea Co.*, 3 Trade Reg. Rep. ¶ 17,463. My prime difficulty with the Court's opinion is that it makes no effort in this direction at all, and leaves the Commission, lawyers, and businessmen at large as to what is to be expected of them in future cases of this kind.

I.

The Court's opinion rests on three separate findings of anticompetitive effect. The Court first declares that the market here was "oligopolistic" and that interjection of Procter would make the oligopoly "more rigid" because "[t]here is every reason to assume that the smaller firms would probably become more cautious in competing due to their fear of retaliation by Procter." The Court, however, does not indicate exactly what reasons lie behind this assumption or by what standard such an effect is deemed "reasonably probable." It could equally be assumed that smaller firms would become more aggressive in competing due to their fear that otherwise Procter might ultimately absorb their markets and that Procter, as a new entrant in the bleach field, was vulnerable to attack.

But assumption is no substitute for reasonable probability as a measure of illegality under § 7, see *Brown Shoe Co., Inc.* v. *United States*, 370 U. S. 294, 323, and Congress has not mandated the Commission or the courts "to campaign against 'superconcentration' in the absence of any evidence of harm to competition." Turner, *supra*, at 1395. Moreover, even if an effect of this kind were reasonably predictable, the Court does not explain why

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glomerate. But the majority in both cases chose to treat them as horizontal and thus did not reach the problem of standards for judging conglomerate mergers. See Brodley, Oligopoly Power Under the Sherman and Clayton Acts—From Economic Theory to Legal Policy, 19 Stan. L. Rev. 285, 303–308.

the effect on competition should be expected to be the substantial one that § 7 demands. The need for substantiality cannot be ignored, for as a leading economist has warned:

> "If a society were to intervene in every activity which might possibly lead to a reduction of competition, regulation would be ubiquitous and the whole purpose of a public policy of competition would be frustrated." Stigler, Mergers and Preventive Antitrust Policy, 104 U. Pa. L. Rev. 176, 177.

The Court next stresses the increase in barriers to new entry into the liquid bleach field caused primarily, it is thought, by the substitution of the larger advertising capabilities of Procter for those of Clorox. Economic theory would certainly indicate that a heightening of such barriers has taken place. But the Court does not explain why it considers this change to have significance under § 7, nor does it indicate when or how entry barriers affect competition in a relevant market. In this case, for example, the difficulties of introducing a new nationally advertised bleach were already so great that even a great company like Procter, which the Court finds the most likely entrant, believed that entry would not "pay out." [2] Why then does the Court find that a further increase of incalculable proportions in such barriers substantially lessens competition? Such a conclusion at least needs the support of reasoned analysis.[3]

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[2] Thus the Procter memorandum which considered the question of entry into the liquid bleach market stated: "We would not recommend that the Company consider trying to enter this market by introducing a new brand or by trying to expand a sectional brand. This is because we feel it would require a very heavy investment to achieve a major volume in the field, and with the low 'available' [a reference to profit margin] the payout period would be very unattractive."

[3] The need for analysis is even clearer in light of the fact that entry into the market by producers of nonadvertised, locally dis-

Finally, the Court places much emphasis on the loss to the market of the most likely potential entrant, Procter. Two entirely separate anticompetitive effects might be traced to this loss, and the Court fails to distinguish between them. The first is simply that loss of the most likely entrant increases the operative barriers to entry by decreasing the likelihood that any firm will attempt to surmount them.[4] But this effect merely reinforces the Court's previous entry-barrier argument, which I do not find convincing as presented. The second possible effect is that a reasonably probable entrant has been excluded from the market and a measure of horizontal competition has been lost. Certainly the exclusion of what would promise to be an important independent competitor from the market may be sufficient, in itself, to support a finding of illegality under § 7, *United States* v. *El Paso Natural Gas Co.*, 376 U. S. 651, when the market has few competitors. The Commission, however, expressly refused to find a reasonable probability that Procter would have entered this market on its own, and the Sixth Circuit was in emphatic agreement. The Court certainly cannot mean to set its judgment on the facts

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tributed bleaches was found to be easy. There were no technological barriers to entry, and the capital requirements for entry, with the exception of advertising costs, were small. The Court must at least explain why the threat of such entry and the presence of small competitors in existing regional markets cannot be considered the predominant, and unaffected, form of competition. To establish its point, the Court must either minimize the importance of such competition or show why it would be substantially lessened by the merger.

[4] Bain's pioneering study of barriers to entry, Barriers to New Competition, recognized that such barriers could be surmounted at different price levels by different potential entrants. Thus even without change in the nature of the barriers themselves, the market could become more insulated through loss of the most likely entrant simply because the prevailing market price would have to rise to a higher level than before to induce entry.

against the concurrent findings below, and thus it seems clear to me that no consequence can be attached to the possibility of loss of Procter as an actual competitor.[5] Cf. *United States* v. *Penn-Olin Chemical Co.*, 378 U. S. 158, 175.

Thus I believe, with all respect, that the Court has failed to make a convincing analysis of the difficult problem presented, and were no more to be said in favor of the Commission's order I would vote to set it aside.

II.

The Court, following the Commission, points out that this merger is not a pure "conglomerate" merger but may more aptly be labelled a "product-extension" merger. No explanation, however, is offered as to why this distinction has any significance and the Court in fact declares that all mergers, whatever their nature, "must be tested by the same standard." But no matter what label is attached to this transaction, it certainly must be recognized that the problem we face is vastly different from those which concerned the Court in *Brown Shoe*, *supra*, and *Philadelphia Nat'l Bank*, 374 U. S. 321. And though it is entirely proper to assert that the words of § 7 are the only standard we have with which to work, it is equally important to recognize that different sets of circumstances may call for fundamentally different tests of substantial anticompetitive effect. Compare *United States* v. *Philadelphia Nat'l Bank*, *supra*, with *FTC* v. *Consolidated Foods Corp.*, 380 U. S. 592.

At the outset, it seems to me that there is a serious question whether the state of our economic knowledge is sufficiently advanced to enable a sure-footed administrative or judicial determination to be made *a priori* of substantial anticompetitive effect in mergers of this kind.

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[5] For a discussion of the difficulty of determining whether entry by a particular company is probable see *Brodley*, *supra*, n. 1, at 332.

It is clear enough that Congress desired that conglomerate and product-extension mergers be brought under § 7 scrutiny, but well versed economists have argued that such scrutiny can never lead to a valid finding of illegality.

> "Where a business concern buys out a firm producing . . . [a product] *which is neither competing*, nor a raw material for its own product . . . there is no competition between them to be extinguished, nor the possibility of fewer alternatives for any customer or supplier anywhere. . . . Perhaps Congress intended to stop conglomerate mergers but their act does not." Adelman, quoted in Blair, *supra*, at 674. See also Bowman, Contrasts in Antitrust Theory: II, 65 Col. L. Rev. 417, 421.

Lending strength to this position is the fact that such mergers do provide significant economic benefits which argue against excessive controls being imposed on them. The ability to merge brings large firms into the market for capital assets and encourages economic development by holding out the incentive of easy and profitable liquidation to others. Here, for example, the owners of Clorox who had built the business, were able to liquify their capital on profitable terms without dismantling the enterprise they had created. Also merger allows an active management to move rapidly into new markets bringing with its intervention competitive stimulation and innovation. It permits a large corporation to protect its shareholders from business fluctuation through diversification, and may facilitate the introduction of capital resources, allowing significant economies of scale, into a stagnating market. See Turner, *supra*, at p. 1317.

At the other end of the spectrum, it has been argued that the entry of a large conglomerate enterprise may have a destructive effect on competition in any market. Edwards, Conglomerate Bigness as a Source of Power,

in National Bureau of Economic Research, Business Concentration and Price Policy 331. The big company is said to be able to "outbid, outspend, or outlose the small one . . . ." *Id.*, at p. 335. Thus it is contended that a large conglomerate may underprice in one market, adversely affecting competition, and subsidize the operation by benefits accruing elsewhere.[6] It is also argued that the large company generates psychological pressure which may force smaller ones to follow its pricing policies, and that its very presence in the market may discourage entrants or make lending institutions unwilling to finance them. Edwards, *supra*, at p. 348; see Bok, Section 7 of the Clayton Act and the Merging of Law and Economics, 74 Harv. L. Rev. 226, 275.[7] While "business behavior is too complex and varied to permit of a single generalized explanation," Stocking, Comment to Edwards, *supra*, at p. 352, these observations do indicate that significant dangers to competition *may* be presented by some conglomerate and product-extension mergers. Further, congressional concern in enacting § 7 extended not only to anticompetitive behavior in particular markets, but also to the possible economic dominance of large companies which had grown through merger. Thus,

[6] But see Turner, Conglomerate Mergers and Section 7 of the Clayton Act, 78 Harv. L. Rev. 1313, 1340. "[T]he belief that predatory pricing is a likely consequence of conglomerate size, and hence of conglomerate merger, is wholly unverified by any careful studies . . . ."

[7] But see Cook, Merger Law and Big Business: A Look Ahead, 40 N. Y. U. L. Rev. 710, 713. "Of course, the conglomerate cases are the best examples of the exotic restraints. Here mere speculation on what either common sense or judiciously selected economists might lead one to infer is apparently enough to prevent a merger. One reads these opinions with growing incredulity. They imply that big businesses have so much strength and such deep pockets that they simply could not lose out in competition with smaller companies . . . . One does not need a statistical survey to know that this is simply not the way the world is."

while fully agreeing that mergers of this kind are not to be regarded as something entirely set apart from scrutiny under § 7, I am of the view that when this Court does undertake to establish the standards for judging their legality, it should proceed with utmost circumspection. Meanwhile with this case before us, I cannot escape the necessity of venturing my own views as to some of the governing standards.

III.

In adjudicating horizontal and vertical combinations under § 7 where the effects on competition are reasonably obvious and substantiality is the key issue, the responsible agencies have moved away from an initial emphasis on comprehensive scrutiny and opted for more precise rules of thumb which provide advantages of administrative convenience and predictability for the business world. See Brodley, Oligopoly Power Under the Sherman and Clayton Acts—From Economic Theory to Legal Policy, 19 Stan. L. Rev. 285.[8] A conglomerate case, however, is not only too new to our experience to allow the formulation of simple rules but also involves "concepts of economic power and competitive effect that are still largely unformulated." This makes clear the need for "full investigation and analysis, whatever the cost in delay or immediate effectiveness." Edwards, Tests of Probable Effect Under the Clayton Act, 9 Antitrust Bull. 369, 377. But cf. Blair, *supra*, at 700. Certainly full scale investiga-

[8] In so doing the Court has moved away from the original recommendations in the Report of the Attorney General's National Committee to Study the Antitrust Laws, which concluded that "it will always be necessary to analyze the effect of the merger in sufficient detail, given the circumstances of each case, to permit a reasonable conclusion as to its probable economic effect." Report, at p. 123. But the development of specific criteria was aided by a degree of experience which does not exist in conglomerate cases, where the caution to analyze in detail seems particularly sound.

tion is supported by the considerations adverted to in Part II of this opinion and the basic fact that "the statute does not leave us free to strike down mergers on the basis of sheer speculation or a general fear of bigness." *General Foods Corp., supra,* at p. 22,749 (Commissioner Elman, dissenting).

Procter, contending that the broadest possible investigation is required here, and noting "the relative poverty of [economic] information about industrial institutions and the relations among different company complexes, as well as the sketchiness of our understanding of methods of competition in specific industries and markets," Bock, The Relativity of Economic Evidence in Merger Cases—Emerging Decisions Force the Issue, 63 Mich. L. Rev. 1355, 1369, has insisted throughout this proceeding that anticompetitive effects must be proved *in fact* from post-merger evidence in order for § 7 to be applied. The Court gives little attention to this contention, but I think it must be considered seriously both because it is arguable and because it was, in some senses, the main source of difference between the Commission and the Sixth Circuit.

In its initial decision, the Commission remanded the proceeding to the Examiner for the express purpose of taking additional evidence on the post-merger situation in the liquid bleach industry. The Commission first held that the record before it, which contained all the information upon which the second Commission decision and the Court rely, was insufficient to support the finding of a § 7 violation. 58 F. T. C. 1203. The Commission's subsequent opinion, handed down by an almost entirely changed Commission, held post-merger evidence generally irrelevant and "proper only in the unusual case in which the structure of the market has changed radically since the merger . . . ." 63 F. T. C. ——. Market structure changes, rather than evidence of market behavior, were held to be the key to a § 7 analysis.

In support of this position, the Commission noted that dependence on post-merger evidence would allow controls to be evaded by the dissimulation of market power during the period of observation. For example, Procter had been aware of the § 7 challenge almost from the date of the merger,[9] and it would be unrealistic, so reasoned the Commission, to assume that market power would be used adversely to competition during the pendency of the proceeding.

The Commission also emphasized the difficulty of unscrambling a completed merger, and the need for businessmen to be able to make at least some predictions as to the legality of their actions when formulating future market plans. Cf. Bromley, Business' View of the du Pont-General Motors Decision, 46 Geo. L. J. 646, 653–654. Finally, the Commission pointed to the strain which would be placed upon its limited enforcement resources by a requirement to assemble large amounts of post-merger data.

The Sixth Circuit was in disagreement with the second Commission's view. It held that "[a]ny relevant evidence must be considered in a Section 7 case . . . . The extent to which inquiry may be made into post-merger conditions may well depend on the facts of the case, and where the evidence is obtained it should not be ignored." 358 F. 2d, at p. 83. The court characterized as "pure conjecture" the finding that Procter's behavior might have been influenced by the pendency of the proceeding. *Ibid.*

If § 7 is to serve the purposes Congress intended for it, we must, I think, stand with the Commission on this issue.[10] Only by focusing on market structure can we

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[9] The merger was consummated August 1, 1957. The Commission's complaint was filed on October 7, 1957.

[10] Cf. *FTC* v. *Consolidated Foods Corp.*, 380 U. S. 592, where this Court held that even an extensive post-merger history, developed outside the influence of a § 7 challenge, was not to be considered a conclusive negation of the possibility of anticompetitive effects.

begin to formulate standards which will allow the responsible agencies to give proper consideration to such mergers and allow businessmen to plan their actions with a fair degree of certainty. In the recent amendments to the Bank Merger Act, Congress has indicated its approval of rapid adjudication based on premerger conditions,[11] and all agency decisions hinging on competitive effects must be made without benefit of post-combination results. The value of post-merger evidence seems more than offset by the difficulties encountered in obtaining it. And the post-merger evidence before us in this proceeding is at best inconclusive.

Deciding that § 7 inquiry in conglomerate or product-extension merger cases should be directed toward reasonably probable changes in market structure does not, however, decide how that inquiry should be narrowed and focused. The Commission and the Court isolate two separate structural elements, the degree of concentration in the existing market and the "condition of entry." The interplay of these two factors is said to determine the existence and extent of market power, since the "condition of entry" determines the limits potential competition places on the existing market. It must be noted, however, that economic theory teaches that potential competition will have no effect on the market behavior of existing firms unless present market power is sufficient

[11] The amendments to the Bank Merger Act require a merger to be challenged within 30 days of agency approval. This negates the possibility of substantial post-merger evidence. 12 U. S. C. § 1828 (c). It is noteworthy that Congress has required rapid adjudication and at the same time required a determination more complex than that which must be made under the antitrust laws. In a Bank Merger Act case the defendants may seek to have the merger upheld because "the anticompetitive effects . . . are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served." 12 U. S. C. § 1828 (c)(5)(B).

to drive the market price to the point where entry would become a real possibility.[12] So long as existing competition is sufficient to keep the market price below that point, potential competition is of marginal significance as a market regulator. Thus in a conglomerate or product-extension case, where the effects on market structure which are easiest to discover are generally effects on the "condition of entry," an understanding of the workings of the premerger market cannot be ignored, and, indeed, is critical to a determination whether the visible effects on "condition of entry" have any competitive significance.

The Commission pinned its analysis of the premerger market exclusively on its concentration, the large market share enjoyed by the leading firms. In so doing the Commission was following the path taken by this Court in judging more conventional merger cases, *e. g.*, *United States* v. *Philadelphia Nat'l Bank*, *supra*, and taking the position favored by the great weight of economic authority. See, *e. g.*, Bain, Industrial Organization. The Sixth Circuit discounted the Commission's analysis because of the presence of some 200 small competitors in the market. The Court bases its agreement with the Commission and its rejection of the Court of Appeals' position on Clorox's alleged domination of the market. But domination is an elusive term, for dominance in terms of percentage of sales is not the equivalent of

[12] Thus Bain points out that in a competitive market where market price is presumed to be cost-based the threat of entry should not affect market price because each firm is presumed to make its pricing decisions without considering their impact on the market as a whole. Even in an oligopolistic market in which each seller must assume that its price actions will have marketwide effect, the threat of entry serves to limit market price only when the optimum return would be obtained at a price sufficient to induce entry. So long as the optimum price is below the entry-triggering price, the threat of entry has no real impact on the market.

dominance in terms of control over price or other aspects of market behavior. Just as the total number of sellers in the market is not determinative of its operation, the percentage of sales made by any group of sellers is similarly not conclusive. The determinative issue is, instead, how the sellers interact and establish the pattern of market behavior. The significance of concentration analysis is that it allows measurement of one easily determined variable to serve as an opening key to the pattern of market behavior.

I think that the Commission, on *this* record, was entitled to regard the market as "oligopolistic" and that it could properly ignore the impact of the smaller firms. I hasten to add, however, that there are significant "economic dissents" from oligopoly analysis in general and stronger arguments that if its principles "are justified in some cases, they are not justified in all cases . . . ." Brodley, *supra*, at p. 292. In adjudicating § 7 questions in a conglomerate or product-extension merger context where the pattern of behavior in the existing market is apt to be crucial, I would, therefore, allow the introduction by a defendant of evidence designed to show that the actual operation of the market did not accord with oligopoly theory, or whatever other theory the Commission desires to apply. In other words, I believe that defendants in § 7 proceedings are entitled, in the case of conglomerate or product-extension mergers, to build their own economic case for the proposition that the merger will not substantially impair competition.

For example, had Procter desired to go beyond demonstrating the mere presence of small competitors and attempted to show that the prices of unadvertised bleaches which were cost determined set an effective ceiling on market price through the mechanism of an

acceptable differential,[13] I think that the Commission would have been obliged to receive and evaluate the proof. But to challenge effectively the presumption which the Commission is entitled to draw from general economic theory, a defendant must present, in my opinion, not only contradictory facts but a more cogent explanation of the pattern of market behavior.

If the proof as a whole establishes that pricing power may be exercised by a firm or firms in the market—that prices may be raised in the long run over competitive prices—then the Commission may legitimately focus on the role of potential competition and the "condition of entry." See Bain, Barriers to New Competition 5, 27. In so doing, however, a new difficulty is encountered. The threat of potential competition merely affects the range over which price power extends. Potential competition does not compel more vigorous striving in the market, nor advance any other social goal which Con-

[13] There was evidence in the record that the liquid bleach market had three separate price levels, one for nationally advertised brands (Clorox and Purex), another for regional brands, and a third for local brands. There was also some testimony by officials of the companies producing the unadvertised regional and local brands, which sold at a lower price than Clorox and Purex, that their prices were determined by their costs. Some witnesses also testified that sales of unadvertised brands were extremely price elastic, and Bain's study of the related soap industry would lend support to that observation. Bain, Barriers to New Competition Appendix D, at 283. Thus, an argument might have been made that because of this price consciousness the prices of advertised brands could not greatly exceed those of regional and local brands, and therefore costs served as the ultimate determinant of market price. On the other hand, there is testimony in the record that the pricing policy of some unadvertised producers was to follow the price of Clorox and maintain a differential sufficient to provide adequate sales.

gress might be said to have favored in passing § 7.[14] Thus it may legitimately be questioned whether even a substantial increase in entry barriers creates a substantial lessening of competition or tendency to monopoly as required by § 7.

Two justifications for the use of entry barriers as a determinant under § 7 can be given. The first is that an increased range over which pricing power may be exercised is contrary to the mandate of § 7 because Congress' use of the word "competition" was a shorthand for the invocation of the benefits of a competitive market, one of which is a price close to average cost. Such an approach leads also to the conclusion that economic efficiencies produced by the merger must be weighed against anticompetitive consequences in the final determination whether the net effect on competition is substantially adverse. See Bork & Bowman, The Crisis in Antitrust, 65 Col. L. Rev. 363. The second justification is found in the tendency to monopoly clause of § 7. Certainly the clearest evil of monopoly is the excessive power the monopolist has over price. Since "antitrust operates to forestall concentrations of economic power which, if allowed to develop unhindered, would call for much more intrusive government supervision of the economy," Blake & Jones, In Defense of Antitrust, 65 Col. L. Rev. 377, 383, increased power over price should be attackable under § 7. Cf. S. Rep. No. 1775, 81st Cong., 2d Sess., 4–5. For these reasons I conclude that the Commission may properly

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[14] Potential entry does not keep "a large number of small competitors in business," *United States* v. *Von's Grocery Co.*, 384 U. S. 270, 275, even if that goal could be considered desirable. In fact, by placing a ceiling on market price it may serve to drive out small competitors who may be relatively inefficient producers. Potential entry does not control the market share of dominant firms or prevent them from expanding their power to force others to accede to their practices.

find a conglomerate or product-extension merger illegal under § 7 because it substantially increases pricing power in the relevant market.

Given the development of a case against the merger in this area, however, the problem of efficiencies raised above must still be faced. The Court attempts to brush the question aside by asserting that Congress preferred competition to economies, but neglects to determine whether certain economies are inherent in the idea of competition. If it is conceded, as it must be, that Congress had reasons for favoring competition, then more efficient operation must have been among them. It is of course true that a firm's ability to achieve economies enhances its competive position, but adverse effects on competitors must be distinguished from adverse effects on competition. *Brown Shoe Co., Inc.* v. *United States, supra*, at p. 320. Economies achieved by one firm may stimulate matching innovation by others, the very essence of competition. They always allow the total output to be delivered to the consumer with an expenditure of fewer resources. Thus when the case against a conglomerate or product-extension merger rests on a market-structure demonstration that the likelihood of anticompetitive consequences has been substantially increased, the responsible agency should then move on to examine and weigh possible efficiencies arising from the merger in order to determine whether, on balance, competition has been substantially lessened.[15] Where detriments to competition are apt to be "highly speculative" it seems wisest to conclude that "possibilities of adverse effects on competitive behavior are worth worrying about only when the

[15] I intimate no view on whether economies would be a defense in a situation such as that presented in *Ekco Products Co.* v. *FTC*, 347 F. 2d 745, where the evidence established that the company entering the market by merger intended to eliminate all competition, and had, in fact, purchased a leading competitor after entry.

merger does not involve substantial economies . . . ." Turner, *supra*, at 1354. The Court must proceed with caution in this area lest its decision "over the long run deter new market entry and tend to stifle the very competition it seeks to foster." *United States* v. *Von's Grocery Co.*, 384 U. S. 270, 301 (STEWART, J., dissenting).

To summarize then, four important guides to the adjudication of conglomerate or product-extension mergers under § 7 seem to come forward. First, the decision can rest on analysis of market structure without resort to evidence of post-merger anticompetitive behavior. Second, the operation of the premerger market must be understood as the foundation of successful analysis. The responsible agency may presume that the market operates in accord with generally accepted principles of economic theory, but the presumption must be open to the challenge of alternative operational formulations. Third, if it is reasonably probable that there will be a change in market structure which will allow the exercise of substantially greater market power, then a prima facie case has been made out under § 7. Fourth, where the case against the merger rests on the probability of increased market power, the merging companies may attempt to prove that there are countervailing economies reasonably probable which should be weighed against the adverse effects.

IV.

The Commission's decision did, I think, conform to this analysis. A review of the points the Commission relied upon is next required.

The Commission first attempted a catalogue of all the possible effects of the merger on competition, many of which were "to an important degree psychological." 63 F. T. C. —. Most of these "effects" were speculations on the impact of Procter's ability to obtain advertising discounts and use its financial resources for increased

sales promotion. Others were predictions as to the possible responses of retailers and competitors to Procter's entry and expected promotional activities. These were, as the Court of Appeals said, speculative at best but the Commission did not place great reliance on them in reaching its ultimate conclusion.

To hold the merger unlawful, the Commission relied on five factors which taken together convinced it that "substantial" anticompetitive consequences could be expected. A "substantial" impact was said to be "significant and real, and discernible not merely to theorists or scholars but to practical, hard-headed businessmen." 63 F. T. C. —. The relevant factors were (1) the excessive concentration in the industry at the time of the merger and the commanding market position of Clorox, (2) the relative disparity in size and strength as between Procter and the firms in the liquid bleach industry, (3) the position of Procter in other markets, (4) the elimination of Procter as a potential competitor, and (5) the nature of the "economies" expected from the merger. The net of these factors was to establish a substantial effect on the market structure variable involved, condition of entry.

Because Clorox had 48.8% of the premerger market and six firms made 80% of the sales, the Commission's conclusion that the market was oligopolistic and Clorox was the price leader must be sustained on this record where no alternative formulation of market operation was attempted. See *United States* v. *Philadelphia Nat'l Bank, supra;* Bain, Industrial Organization. The Commission's position is aided by actual evidence in the record supporting its hypothesis. Officials of other bleach companies appearing in the proceedings testified that their prices were established with regard to Clorox's price and uniformly regarded Clorox as the leading competitor in the market. The foundation was thus adequate for

a consideration of probable changes in the "condition of entry."

Procter was indisputably many times the size of any firm in the liquid bleach industry and had great financial resources. Its advertising budget was 10 times that of Clorox and the scale of its expenditures qualified it for quantity discounts from media as well as enabling it to purchase expensive but advantageous advertising outlets. The record clearly showed that "pre-selling" through advertising was a requisite for large scale liquid bleach operations,[16] and thus the difference between Procter's advertising power and that of Clorox was important to a potential entrant. The expenditure on advertising which would have to be undertaken by a potential entrant in order to capture an acceptable market would vary with the tenacity of response to be expected from existing competitors. The greater the expenditure required, the higher the price to be commanded would have to be before entry would be undertaken.[17] In this regard the substitution of Procter for Clorox was a substantial change.

Procter's strong position in other product markets is equally relevant to the probability of change in the "condition of entry." It would be unrealistic, however, to attach substantial importance to Procter's extensive financial resources unless Procter were able to bring them to bear in the liquid bleach industry. If Procter were

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[16] This conclusion is supported by Bain's study of the closely related soap and detergent markets. See n. 13, *supra*.

[17] This is the "lesson" of the incident in Erie, Pennsylvania, where Clorox was able to repel Purex's assault on its market position. Purex's initial success showed that part of the market could be captured, but Procter's response made clear that the beachhead could not be maintained without continued heavy advertising expenses. Unless the price commanded was expected to be quite high, these advertising expenditures could not be sustained.

hard pressed along all fronts of its operation, competitors could safely assume that increased pressure in the liquid bleach industry would not provoke a strong response, simply because financial resources could not be diverted to that purpose. Procter, however, was conducting highly profitable operations in other markets and had demonstrated its ability to bring large resources to bear in intensive competitive campaigns by its successful introduction of Comet cleanser and various toothpastes on a nation-wide scale. Proof of demonstrated ability to mobilize and utilize large financial resources seems to me required if the introduction of such resources into the market is alleged to have a substantial effect.[18] Such proof exists in this record.

Procter's role as a potential entrant was also related, by the Commission, to the "condition of entry." The Commission had "no occasion to speculate on such questions as whether or not Procter . . . would in fact have entered the bleach industry on its own . . . ." 63 F. T. C. ——. It merely noted that Procter's growth pattern, financial resources, experience in the field and management policies made it the most favorably situated potential entrant. Thus the Commission reasoned that Procter might have been induced to enter the liquid bleach market when that market had a prevailing price level lower than that necessary to attract entry by more remote competitors. The limitation potential competition places on pricing policies depends on the barriers to entry facing

[18] This limitation was recognised by the author of the Commission's opinion in this case, Commissioner Elman, in his dissenting opinion in *National Tea Co.*, 3 Trade Reg. Rep. ¶ 17,463, at p. 22, 708. "The answer [in a § 7 case] can only be found in a careful and detailed analysis of the nature and economic condition of the industry, the structure of the relevant geographic markets, and the overall market power of the national chain and its capacity to bring it to bear in particular local markets."

particular competitors, and increased insulation can stem not only from changes which make it more costly for any firm to enter the market, but also from limitation of the class of entrants to those whose entry costs are high. See Bain, Barriers to New Competition 21.

At first blush, a serious inconsistency seems to arise between the Commission's analysis of this potential competition, and its expressed fear that the merger might turn the field into one of big business competition by inducing other large firms to seek entry into the market. If Procter's entry could be shown to have increased rather than decreased the likelihood of additional entry then it could hardly be attacked because of adverse effect on the "condition of entry." And I think it irrelevant whether further entry might be by small or large firms. Although there are those who attach a talismanic significance to small firm competition, see *United States* v. *Von's Grocery Co.*, *supra*, at p. 275, I do not believe that competition between dynamic, well-managed large companies is less desirable than any other form. However, there is nothing in the record to show that the Commission's discussion of this point was more than mere speculation, and I cannot attach any real significance to it.

The Commission's analysis of the economies involved in this case is critical and I regret that the Court refrains from commenting upon it. The Commission—in my opinion quite correctly—seemed to accept the idea that economies could be used to defend a merger, noting that "[a] merger that results in increased efficiency of production, distribution or marketing may, in certain cases, increase the vigor of competition in the relevant market." 63 F. T. C. —. But advertising economies were placed in a different classification since they were said "only to increase the barriers to new entry" and to be "offensive to at least the spirit, if not the letter, of the antitrust laws." *Ibid.* Advertising was thought to benefit only

the seller by entrenching his market position, and to be of no use to the consumer.

I think the Commission's view overstated and oversimplified. Proper advertising serves a legitimate and important purpose in the market by educating the consumer as to available alternatives. This process contributes to consumer demand being developed to the point at which economies of scale can be realized in production. The advertiser's brand name may also be an assurance of quality, and the value of this benefit is demonstrated by the general willingness of consumers to pay a premium for the advertised brands. Undeniably advertising may sometimes be used to create irrational brand preferences and mislead consumers as to the actual differences between products,[19] but it is very difficult to discover at what point advertising ceases to be an aspect of healthy competition. See Bork, Contrasts in Antitrust Theory: I, 65 Col. L. Rev. 401, 411, n. 11. It is not the Commission's function to decide which lawful elements of the "product" offered the consumer should be considered useful and which should be considered the symptoms of industrial "sickness." It is the consumer who must make that election through the exercise of his purchasing power. In my view, true efficiencies in the use of advertising must be considered in assessing economies in the marketing process, which as has been noted are factors in the sort of § 7 proceeding involved here.

I do not think, however, that on the record presented Procter has shown any true efficiencies in advertising. Procter has merely shown that it is able to command equivalent resources at a lower dollar cost than other

[19] The Commission found, for example, that Clorox was identical to other liquid bleaches. Procter contended, and the Court of Appeals concluded, that Clorox employed superior quality controls. The evidence seemed to indicate that the regional and national brands were very similar, but that some local brands varied in strength.

bleach producers. No peculiarly efficient marketing techniques have been demonstrated, nor does the record show that a smaller net advertising expenditure could be expected. Economies cannot be premised solely on dollar figures, lest accounting controversies dominate § 7 proceedings. Economies employed in defense of a merger must be shown in what economists label "real" terms, that is in terms of resources applied to the accomplishment of the objective. For this reason, the Commission, I think, was justified in discounting Procter's efficiency defense.

For the reasons set forth in this opinion, I conclude that the Commission was justified in finding that the Procter-Clorox merger entails the reasonable probability of a substantial increase in barriers to entry and of enhancement in pricing power in the liquid bleach industry and that its order must be upheld.